DOCUMENT RESUME

ED 475 102 EA 032 232

AUTHOR	Greene, Diane
TITLE	Before the Strike: Planning Ahead in Difficult Negotiations.
INSTITUTION	California School Boards Association, Sacramento.
PUB DATE	1996-12-00
NOTE	81p.
AVAILABLE FROM	California School Boards Association, 3100 Beacon Blvd., West Sacramento, CA 95691. Tel: 800-266-3382 (Toll Free); Fax: 916-371-3407; Web site: http://www.csba.org.
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	EDRS Price MF01 Plus Postage. PC Not Available from EDRS
DESCRIPTORS	Arbitration; Collective Bargaining; Contracts; Elementary Secondary Education; *Employer Employee Relationship; Employment Problems; Labor Demands; *Labor Problems; Negotiation Agreements; Negotiation Impasses; School Security; *Strikes; Teacher Strikes; *Unions
IDENTIFIERS	*California

ABSTRACT

This publication offers guidance to school-board members, superintendents, and district staff in the planning, implementation, and rebuilding phases of a faculty or staff strike. It is intended to be used before a strike is imminent so that a strike plan can be implemented and the effects during and after a strike can be mitigated. The handbook begins with background information of recent school strikes in California. It continues with suggestions for avoiding and preventing strikes under California law. The next section offers practical tips on preparing for a strike, stating that solid preparation is the key to surviving a strike with minimal disruption and the best chances for rebuilding relations. The next section provides the key issues to consider when drawing up a strike plan. The handbook concludes with the steps to take after a strike, focusing on ways to resume normal operations and rebuild relations with striking employees. Appended are a glossary of legal and personnel-policy terms, a collective-bargaining flowchart and narrative, and checklists summarizing key actions for districts to take before, during, and after a strike. (Contains 20 references.) (WFA)

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Before the Strike: Planning Ahead in Difficult Negotiations.

California School Boards Association

1996

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Before the strike:

Planning ahead in difficult negotiations

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Published December 1996 by the
California School Boards Association
3100 Beacon Blvd.
West Sacramento, California 95691

To order this or other CSBA publications, contact:
CSBA Book Sales at (916) 371-4691 or FAX
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Preface

When collective bargaining goes smoothly, the school district's governing board and its employees are able to come to agreement about key issues and settle on a contract that meets the needs of the district and employees. When there are major differences of opinion on some of these key issues, however, the result may be a series of dispute resolution procedures and, on rare occasions, a strike.

Strikes can be devastating — for the district, staff, students, the community and board members. For this reason, boards must do everything possible to avoid a strike, except agree to terms they know would hurt the district and its students. When a strike is unavoidable, its impact can be softened if a district prepares carefully, effectively implements a strike plan and makes a commitment to rebuild relations and operations after the strike.

This document offers guidance to school board members, superintendents and district staff in the planning, implementation and rebuilding phases of a strike. It recognizes that not all strikes are the same and that districts must be flexible as they tailor strategies to meet their specific needs. Still, the experiences of districts that have successfully weathered a strike suggest some guiding principles that may prove useful to other districts.

This document is not just for districts in the middle of a strike. To get the most from this document, boards, superintendents and district staff should read it long before a strike is imminent and think about what they might do if they were faced with a strike.

The California School Boards Association offers additional services to assist districts with employment relations issues, including a resource guide of practical information, an on-line bulletin board service for resources and networking, an on-site workshop for the board and its bargaining team, and crisis support, including communications assistance. For further information, contact CSBA Employment Relations Services at (800) 266-3382.

Executive Summary

No one wants a strike. A strike by school employees, or even the threat of a strike, can have a serious impact on students, parents, staff, the superintendent, board and the community — normal school operations may be disrupted and confidence in the school system will be shaken.

There are steps that can be taken to avoid a strike. Usually, these efforts are sufficient. In some situations, however, the board simply cannot accept the contract terms proposed by the employee's union and the union does not accept the district's positions. The result is a union vote to go on strike in an effort to achieve its goals.

This document provides background information about the incidence of strikes in California in the past 21 years, types of work stoppages and the legality of each type and of certain strike activities. It also provides strategies to help school districts and county offices of education avoid a strike if possible, be well prepared for a strike in case one occurs, manage district operations during a strike and rebuild after a strike.

Background Information

From 1976 to 1996, there have been 123 strikes in California's K-12 public school system (averaging roughly one-half of a percent of all districts each year). These strikes ranged in length from one to 63 days, with over one-third of these lasting only one day. The average length was 7.66 days and the median was three days.

There are many different types of work stoppages and strikes. Some of these are protected activity under the Educational Employment Relations Act (Government Code Section 3540 et seq.); others are not. The Public Employment Relations Board has the exclusive jurisdiction to determine whether a strike is unlawful.

Although the legality of public employee strikes is not specifically addressed in California statutes, a series of PERB and court decisions provide some guidance in this area. In general, a strike seems to be protected only when it occurs after statutory impasse procedures have failed; is provoked by the district's unfair labor practices and is undertaken as a last resort; involves withdrawal of voluntary services rather than required services; and/or is a sympathy strike honoring a legal strike by another union. It appears that certain types of strikes (e.g., intermittent or partial strikes, surprise strikes, slowdowns, etc.) may be unlawful, as are strikes that create a substantial and imminent threat to public health and safety or *severely* disrupt the educational process.

Even when a strike is protected under the EERA, certain activities are unlawful, including criminal misconduct and coercion or intimidation of nonstriking employees. Neither the union nor the district may engage in unfair practices defined in Government Code Sections 3543.5 and 3543.6.

Avoiding a Strike

Some strikes are unavoidable. However, a strike will be less likely to occur when:

- positive relations exist throughout the district;
- negotiations are conducted in a fair and respectful manner;
- the collective bargaining agreement contains a no-strike clause; and
- the district's policies and regulations do not contain any loopholes that might allow employees to strike without consequences.

In addition, either the district or the union may resolve differences by declaring an impasse and entering into mediation and factfinding processes as specified in law (Government Code Sections 3548 and 3548.8 and the California Code of Regulations, Title 8, Sections 32791-32813). Both of these processes generally must be completed before the union may engage in a strike over the terms of an agreement.

Preparing for a Strike

Solid preparation is the key to surviving a strike with minimal disruption and the best chance of coming out of the strike with a workable contract and a strong basis for rebuilding relations. The district should not wait until a strike has begun, or even until one is threatened, before thinking about what it would do in the event of a strike.

A district can be better prepared by looking for warning signs. There may be indications of trouble in what happened in past bargaining sessions, in the number of grievances filed, in recent settlements by neighboring districts and in what administrative staff are hearing from employees. Most of the warning signs, however, occur at the bargaining table. The board and superintendent need to monitor negotiations and look for polarization of positions, escalation of demands, personal attacks on the board or the negotiator, or other evidence that the district and union may not be able to come to agreement on contract terms. Upon declaration of an impasse and institution of impasse procedures, the district should step up its strike preparations.

Early preparations should include the development of a comprehensive strike plan. Such a plan should address the specific roles and responsibilities that the board and district staff will perform in the event of a strike. It should also address district operations (e.g., the feasibility of keeping schools open, staffing considerations, educational program issues, status of extracurricular activities, equipment and supply needs, etc.), safety measures, internal and external communications, provisions for safe and effective board meetings, possible legal recourses for stopping a strike and estimated costs of various strategies.

As soon as the union gives notice that it intends to strike, the district should communicate with appropriate agencies (i.e., PERB and the Employment Development Department), employees in the striking unit, employees in nonstriking units, parents, students, law enforcement, the media, community leaders, the county office of education and CSBA.

During a Strike

When a strike occurs, the district should be ready to implement its strike plan. Among the issues the strike plan must address are:

1. ***Response to union pressure tactics***. During a strike, board members and district staff can expect to experience intense political and psychological pressure from the union. Union tactics may range from propaganda and misinformation to acts of vandalism or theft. Strategies are available to resist such tactics, provided the board and superintendent stay together as a team.

2. ***Roles and responsibilities***. An effective response to a strike requires clear delineation of roles and responsibilities of the committee or team assigned to coordinate the district's strike-related activities and communications. Roles and responsibilities of board members, superintendent, negotiator, communications coordinator, primary district contact and district spokespersons, legal counsel, principals and other staff should also be delineated.

3. ***Maintenance of district operations***. Schools should be kept open if at all possible. In deciding whether this is feasible, the district needs to consider costs and its ability to find qualified substitutes, maintain the quality of the educational program, maintain other essential services and ensure the safety of students, staff and the public.

   Although the district does not need to pay employees for the period of time they are not working, it should consult legal counsel to determine what benefits, if any, should be continued. In finding substitutes for striking teachers, the district must ensure that substitutes meet state requirements. The district also needs to set the rate of pay for substitutes, ensure their safety and communicate with them frequently.

   The board and superintendent have a responsibility to ensure that students continue to receive a quality education during the strike. The district has a right to keep and use the lesson plans prepared by teachers and should develop other instructional materials and activities as necessary to keep students busy, controlled and learning. The district also needs to weigh public sentiment, safety issues and the availability of staff in determining whether or not to continue to conduct extracurricular activities.

   Finally, the district needs to consider the potential impact of a strike on other district services. For example, transportation, food services and construction work may be affected.

4. ***Safety measures***. The district must be prepared to take measures to protect students, working staff, board members and school property and equipment. It should review existing district or school-site safety plans, evacuation procedures and safety-related board policies, and develop additional strategies as needed. Increasing security personnel, working more closely with local law enforcement, collecting keys from employees and providing alternative drop-off locations for school buses are among the strategies that might be considered.

5. ***Communications***. The district will have greater success if it has a cohesive plan for external communications and an approach that is based on providing factual information in a credible manner. In addition, the district needs a plan for frequent and effective internal communications among the board and district staff.

6. ***Board meetings***. The board should proceed with its regularly scheduled board meetings but may need to make extra efforts to maintain order and reduce the opportunity for union members to use the meetings for soliciting support.

7. ***Legal strategies***. Under certain conditions, it is possible to seek an injunction to stop the strike, limit the number or location of picketers or stop violence. Another potential legal avenue is the filing of unfair labor practice charges.

8. ***Continued negotiations***. If negotiations continue during a strike, the board must be careful not to succumb to the pressure of the strike and make an agreement that will hurt the district's fiscal health or its ability to provide the best educational program possible.

Rebuilding After a Strike

What happens *after* a strike is critical in terms of getting past the hurt feelings and general disruption and focusing on the education of the district's students. The board and superintendent should be familiar with laws pertaining to discipline, reinstatement and treatment of strikers. However, the focus of post-strike activity should be on resuming normal operations and rebuilding relations with employees, parents, students and the community. Also, to avoid future strikes or to at least be better prepared for one, the district should assess the entire experience. It should examine the events that led to the strike, the district's effectiveness in responding, the impact of the strike on various groups and unresolved issues that may pose future problems.

1. Introduction

The success of a district's education program depends on the ability of staff to provide effective instruction and efficient operations. Governing boards, superintendents and administrators recognize this fact and want to support their staff in the delivery of these services. They seek to recruit and hire well-qualified staff, strengthen their skills and evaluate their performance on a regular basis.

One way that boards and superintendents address personnel issues is through the collective bargaining process in which the district and employee unions discuss and come to agreement on issues concerning wages, hours and other conditions of employment. The contract that results from this process is a legally binding agreement — one that impacts the district's vision, budget, instruction, achievement, operations, environment and morale.

Both the district and the union need to be familiar with the law that governs the collective bargaining process. The Educational Employment Relations Act (Government Code Section 3540 et seq.), also known as the Rodda Act, contains standards for the collective bargaining process and for the conduct of both the district and the employee unions in that process. However, the law also contains sufficient flexibility to allow for a variety of approaches and strategies by both parties.

Ideally, the collective bargaining process is fair, focused on an exploration of common interests, built upon stable relations and based on accurate information and sound reasoning. The long-term fiscal condition of the district is safeguarded and contract provisions are mutually satisfying.

Sometimes, however, the interests of the district are at odds with those of the union. As an employer, the district has a desire and certain responsibilities to meet the needs of its employees. But as the legal representative of the district, the board must place the public's interests first when the district is negotiating with an employee union. The board must always consider the interests of the taxpayers, parents, students and other district employees. The union's interest, on the other hand, is to represent the employees in its bargaining unit.

"While strikes are not as common as they were in the '70s and '80s, districts today still face a great deal of pressure during the collective bargaining process. . . . The adversarial win/lose context can force boards and unions to work against one another, rather than working collaboratively to find solutions that meet the needs of the district, staff and, most of all, the schoolchildren." (McFadden, 1996 Winter)

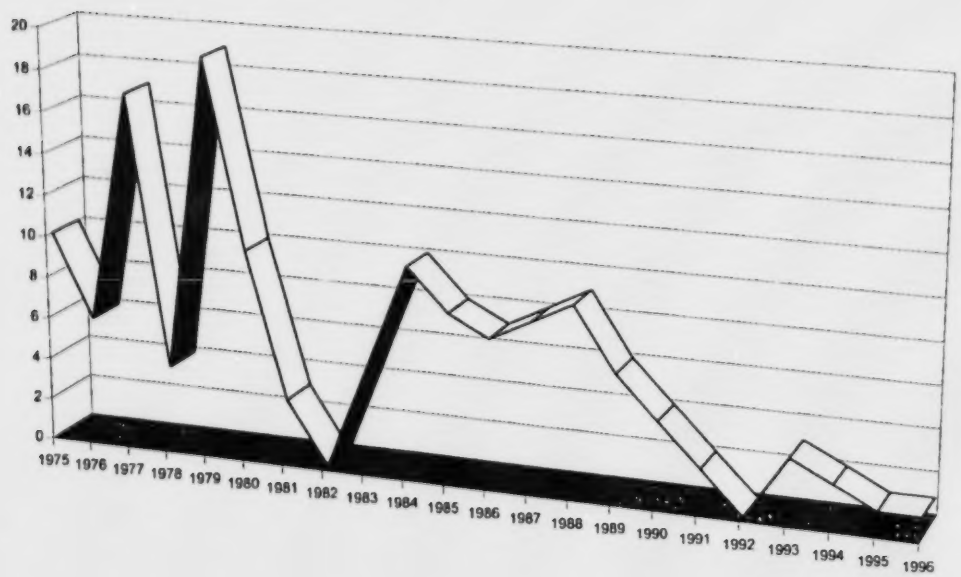
When the district and the union reach a stalemate (or an "impasse") on contract issues, there are procedures specified in the EERA to attempt to resolve these differences. Mediation and factfinding processes (described in Chapter 2) involve neutral third parties in an attempt to bring closure to the negotiations.

In some cases, however, even these efforts are unsuccessful, and a union may go on strike. The district should always be prepared for this possibility.

A strike has a serious impact on school operations and on the community. Even the threat of a strike can shake up an otherwise stable district. Students and their parents are concerned about the possible interruption of the education program and, if schools remain open, about the quality of education offered during the strike. Nonstriking staff members and school administrators may be asked to perform extra duties and may worry about maintaining their relations with their colleagues. The superintendent and district managers work long hours, and sometimes under great stress, to ensure that district operations continue as normal as possible, that students and staff are safe and that negotiations continue. Board members may receive tremendous pressure from employees and some community members and may even face the threat of recall or a difficult reelection. Members of the community may take sides on the issue, or blame both parties equally for being more concerned about labor turf battles than about educating students.

For these reasons, the board and superintendent should do their best to avoid a strike. If it is unavoidable, the strong leadership of the board and superintendent will be more important than ever. Careful planning, teamwork and fortitude will be required to survive the strike, come out of it with a solid contract that meets the district's needs and be in a position to rebuild relations and community confidence.

Figure 1. Number of Strikes in California's K-12 Public Schools 1975-1996



Note: Data compiled by California Public Employment Relations, Institute of Industrial Relations, University of California, Berkeley. Sick-outs or any concerted activities other than strikes are not included. Strikes that crossed over into two calendar years (1986-87 and 1995-96) are recorded in the year in which they began.

Incidence of Strikes in California

Since 1976, there have been 123 strikes in California's K-12 public school system, including 121 in school districts and two in county offices of education. Most of the strikes involved employee organizations representing teachers; only four involved classified staff.

Although these numbers may seem alarming, the average number of strikes per year was 5.86, a relatively low figure given the large number of school districts and employee unions in California. In fact, this represents an average of only about one-half of a percent of all districts each year. Furthermore, the number of strikes in California's public schools has been decreasing in recent years (see Figure 1). In the past 10 years, California experienced less than half of the number of strikes that it did in the preceding 10 years.

These strikes ranged in length from one to 63 days, for a total of 942 days over the 21-year period from 1976 to 1996 (see Table 1). Most of the strikes were relatively short in duration — the average length was 7.66 days and the median was three days. Over one-third of the strikes (47) lasted only one day. However, over 10 percent (14 strikes) lasted 20 days or more.

Table 1. Length of Strikes in California's K-12 Public Schools

Number of Days	Number of Strikes	Percentage of Strikes
1-5	74	60.2
6-10	16	13.0
11-15	15	12.2
16-20	5	4.1
21-25	4	3.2
26-30	5	4.1
31-35	0	0.0
36-40	2	1.6
41-45	1	0.8
46-50	0	0.0
51-55	0	0.0
56-60	0	0.0
61-65	1	0.8

Note: Based on a total of 123 strikes during 1976-1996 lasting a total of 942 days.

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Types of Work Stoppages

Boards should be aware of the different types of strikes and work stoppages that employees might choose depending on their goals. Sick-outs, slowdowns and intermittent strikes are some examples — anything that interferes with district operations might be instituted. Some of these activities are protected forms of activity under the EERA; others have been found to be unlawful (see "Legal and Illegal Work Stoppages," p. 5).

The California Public Employee Relations *Pocket Guide to the Educational Employment Relations Act* (December 1994, revised edition) defines a "strike" as:

> *A work stoppage. Employees acting together in refusing to work in order to gain a bargaining concession or to persuade the employer to take certain action. Usually occurs when negotiations on a new agreement reach impasse and lasts until settlement on a new agreement is reached, but may be called for a shorter period as a pressure tactic or to protest employer actions. Usually conducted under leadership of the employee organization, following a vote among members.*

Types of strikes and other work stoppages include:

1. ***Sick-out.*** Large numbers of employees call in sick in order to disrupt services.
2. ***Sit-in.*** Employees occupy the employer's premises but refuse to work.
3. ***Slowdown.*** Employees slow down their production or work output from that which is normally required and expected while still receiving their regular pay.
4. ***Work-to-rule campaign.*** Employees slow down services by very deliberately following every rule, policy or procedure of the employer and do nothing more than is literally required by their formal obligations as employees.
5. ***Rolling strike.*** Employees strike different sites on different days in order to confuse the employer.
6. ***Intermittent strike.*** Employees go on strike, return to work for awhile and then go back on strike.
7. ***Partial strike.*** Employees attend to some but not all of their required duties (e.g., show up for some classes but not others, or miss back-to-school night or similar activities).
8. ***Surprise strike.*** The union attempts to surprise the employer with work stoppages. The picket captain at each site may announce each day whether or not the employees will strike or go back to work that day, or employees may be instructed to walk off the job at a particular time during the day.
9. ***Wildcat strike.*** A minority of employees strike without authorization by the exclusive bargaining agent representing those employees.
10. ***Sympathy strike.*** Employees belonging to one union refuse to cross the picket line of another union.

Legality of Strikes and Certain Conduct

Case law, the EERA and decisions by the Public Employment Relations Board have found that some types of work stoppages and related activities are lawful while other types of work stoppages and behavior are unlawful. When the union engages in activity that is unlawful or "unprotected" under the EERA, the district potentially has legal options to halt the behavior, discipline the offenders and/or seek damages for strike-related expenses (see "Legal Strategies," p. 47, and "Consequences for Strikers," p. 49).

Legal and Illegal Work Stoppages

In some states, legislation prohibits strikes by school employees (Tislerics, 1994). In California, legislation has not specifically addressed the issue. However, a series of court and PERB decisions have judged strikes by public employees to be legal under limited conditions (California Public Sector Labor Relations, 1989). PERB has exclusive jurisdiction to determine whether a strike is unlawful.

When are strikes by public employees legal?

Although California law pertaining to strikes is ambiguous, it appears that a strike may be *protected* if it:

- occurs only after statutory impasse procedures have failed;
- is provoked by an employer's unfair practices and was undertaken as a last resort;
- involves withdrawal of voluntary services; and/or
- is a sympathy strike honoring a legal strike.

It appears that a strike may be *unlawful* if it:

- begins or is threatened prior to the completion of the statutory impasse procedures;
- creates a substantial and imminent threat to the health and safety of the public;
- is intermittent or partial in nature;
- is a surprise strike without sufficient notice to the district;
- is a slowdown, sit-in or work-to-rule action that results in failure to perform "normally required assigned and assigned adjunct duties";
- is a sick-out encouraged, planned, authorized or ratified by the union;
- is a wildcat strike not authorized by the employees' exclusive representative;
- is a sympathy strike that honors an illegal primary picket line; and/or
- threatens to severely disrupt the educational process (i.e., where the district cannot provide the required number of instructional days or student attendance is significantly affected).

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In 1985, the California Supreme Court determined that **work stoppages by public employees are not unlawful per se unless it is clearly demonstrated that such a work stoppage creates a substantial and imminent threat to the health an d safety of the public** (County Sanitation District No. 2 vs. Los Angeles County Employees Association (1985), 38 Cal. 3d 564, 574-585, 214 Cal. Rptr. 424, 699 P.2d 835, cert. denied, 474 U.S. 995, 1985).

The courts have rejected arguments that strikes by public employees should be illegal because they interrupt essential services, undermine the sovereignty of governmental authority and give unions excessive bargaining leverage that distorts the legislative process. The public health and safety standard, though, allowed the state Legislature to declare strikes by firefighters and police to be illegal. For schools and other public institutions, the courts essentially require determination on a case-by-case basis whether the public interest overrides the basic right to strike.

In a number of cases, PERB has considered whether strikes by school employees are allowed under the EERA. In Modesto City Schools (1983; PERB No. 291, 7 PERC 14090), PERB concluded that Government Code Section 3543, which states that employees have the right to form, join and participate in the activities of employee organizations, grants public school employees a right to strike except as limited by other EERA provisions. The decision was based on a finding that the district had provoked the strike by its unfair practices (see "Unfair Practices," p. 9).

Later, PERB overruled the Modesto opinion to the extent it held that Government Code Section 3543 grants a right to strike. In Compton Unified School District (1987; PERB No. IR-50, 11 PERC 18067), the panel was divided as to whether strikes are legal under the EERA, even if provoked by unfair practices of the employer. The Compton strike was ruled illegal but primarily over issues related to its disruption of educational services. A PERB decision issued the same year in Sacramento City Unified School District (PERB No. IR-49, 11 PERC 18053) cited the previous decision (Modesto City Schools) that a strike might be considered protected when provoked by unlawful employer conduct, but added that there must be a causal connection between the employer's action and the strike and that PERB would consider whether other means of resolving disputes were available.

In 1993, in Vallejo City Unified School District (PERB No. 1015, 17 PERC 24166), PERB again rejected the notion that all teacher strikes are illegal. It used the Compton test and concluded that the district did not indicate a total breakdown in the educational process since it was able to recruit substitutes and the impact did not extend beyond the week of the strike. Furthermore, PERB concluded that there was not a total breakdown of negotiations since the parties had already completed post-factfinding negotiations.

PERB has consistently ruled that strikes held before completion of the statutory impasse procedures (see p. 14) create a "rebuttable presumption" that such action violates the union's duty to negotiate in good faith or to participate in good faith in the impasse resolution process. Therefore, unless the district "provoked" the strike through unlawful conduct, a strike may be unlawful if it is held or even threatened before the impasse procedures have been completed.

Surprise strikes, in which little or no notice is given to the employer before the walkout, have been held by PERB to be an "unlawful pressure tactic" in violation of the duty to bargain in good faith (San Ramon Valley Unified School District (1984), 8 PERC 15187). The union is required to give "adequate notice" since there is a public interest in ensuring minimal disruption of educational services, districts have a right to keep schools open with substitute personnel, and districts need to notify parents in sufficient time for them to decide whether to send their children to school during a strike.

Wildcat strikes would appear to be unlawful based on PERB's approval of federal precedent prohibiting certain wildcat strikes.

Sick-outs are not protected, but the burden falls to the district to provide proof that the union "encouraged, planned, authorized or ratified" the sick-out (Compton Community College District (1989), 13 PERC 20076). It is not enough to show that union leadership participated in the sick-out; rather, the district must provide evidence that union leaders "were in fact acting as agents of the [union] rather than as individuals."

PERB has also held that partial strikes, slowdowns, sit-ins and work-to-rule actions are unprotected concerted activities if they result in failure to perform "normally required assigned and assigned adjunct duties," and employees may be disciplined for such actions. An intermittent or partial strike is considered to be unlawful because it "allows employees to pick and choose when they work, and be able to afford to strike because of the economic benefit earned when not striking." Nevertheless, PERB has refused injunctive relief when there was no proof of a total breakdown in the educational program or of the unavailability of alternative relief (Fremont Unified School District (1990), PERB No. IR-54, 14 PERC 21107).

If a slowdown or work-to-rule action involves "voluntary" work, it is protected. Examples of "voluntary" work include extra-period assignments, use of student teachers and substitution among teachers. On the other hand, PERB has found the following to be *required* duties: participating in teacher evaluations, submitting lesson plans, attending faculty meetings, participating in inservice training, advising clubs, chaperoning dances, submitting progress reports, giving exams and similar assignments. Whether an activity is voluntary or mandatory is determined on a case-by-case basis, with heavy emphasis placed on the past practice for a given employer (Modesto City Schools).

There is nothing in California's public sector laws, and no state court or PERB decision, addressing sympathy strikes in which public employees refuse to cross the picket lines of another unit's strike. However, in one California case involving a secretary who typed bargaining proposals for the teacher's union of which she was not a member, a court of appeal held that an employee's activities on behalf of a union representing a different bargaining unit were protected by the EERA under Government Code Section 3543 (McPherson vs. PERB (1987), 189 Cal.App.3d 293).

When are picketing and other informational activities legal?

Unions may publicize their position through:

- peaceful informational picketing in public forums; and
- distribution of handbills, leaflets and letters.

Unions may *not* engage in:

- misconduct that violates criminal laws or tends to coerce or intimidate nonstriking employees;
- attempts during duty time to seek student support for the strike; and
- distribution of materials to parents through students.

Behavior During Strikes

Even in situations where strikes by school employees are protected, not all strike behavior is legal. If striking employees engage in unprotected conduct, they may be subject to disciplinary action.

Peaceful informational picketing (i.e., the patrolling of a locale or the employer's facility with placards or handbills for the purpose of informing the public about a dispute, without an attempt to persuade people not to cross the picket line) is an act of free speech and assembly which is protected by the First Amendment of the U.S. Constitution and by the California Constitution. However, because picketing may have a purpose of inducing actions, it is subject to restrictive regulation (California Public Sector Labor Relations, 1989; Ohio School Boards Association, 1996).

Normally, picketers may patrol in areas traditionally considered public forums. They may picket a school board member's place of business, a residential neighborhood or a block of homes, but not a particular residence (Pittsburg Unified School District vs. California School Employees Association (1985), 166 Cal. App. 3d 875, 892-893, 213 Cal. Rptr. 34; Frisby vs. Schultz (1988), 487 U.S. —, 101 L. Ed. 2d 420, 428-431, 108 S. Ct. 2495).

Picketers have no right to violate criminal laws such as trespassing, assaulting, blocking access to property or using violence. The standard used by PERB is "whether the misconduct may reasonably tend to coerce or intimidate [nonstriking] employees in the exercise of their rights [not to participate in a strike]" (Fresno Unified School District (1982), PERB No. 208, 6 PERC 13110). In applying this standard, PERB has found that threats of physical violence and bodily injury are unlawful, but name-calling and abusive or vulgar language are not enough to violate EERA under Government Code Section 3543.6(b) (California Public Sector Labor Relations, 1989).

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Distributing handbills or leaflets to employees or the public is protected by the free speech rights of the U.S. Constitution. The California Constitution also protects the right of individuals to distribute handbills and petition on private property that is open to the public (Pruneyard Shopping Center vs. Robins (1980), 447 U.S. 74, 78, 64 L. Ed. 741, 100 S. Ct. 2035, affirming Robins vs. Pruneyard Shopping Center (1979), 23 Cal. 3d 899, 905-906, 910, 153 Cal. Rptr. 854, 592 P.2d 341). PERB has held that distributing leaflets is protected under the EERA if the leaflet is the product of an employee organization and the content is not malicious or defamatory (Mt. San Antonio Community College District (1982), PERB No. 224, 6 PERC 13163).

Letter writing is also a protected form of publicizing an employment dispute (Santa Monica Unified School District (1980), PERB No. 147, 5 PERC 12003; San Leandro Unified School District (1983), PERB No. 288, 7 PERC 14079). However, teachers' sending notes about a labor dispute to parents through the students may be unlawful (Konocti Unified School District (1982), PERB No. 217, 6 PERC 13152).

Finally, PERB found that an employee's act of addressing students during duty time by stopping a school bus to encourage students to support a strike was unprotected under the EERA (Konocti Unified School District (1982)).

Unfair Practices

Neither the district nor the union may engage in "unfair practices," defined in Government Code Sections 3543.5-3543.6, during a strike or at any other time.

Unfair practices committed by the district may result in filing of unfair labor practice charges by the union against the district. They may also cause PERB to rule that a strike was "provoked" and therefore justified if there was no other action available to the union. By law, it is an unfair practice for the district to:

- impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain or coerce employees because they exercise their rights;
- deny to employee organizations the rights guaranteed to them;
- refuse or fail to meet and negotiate in good faith;
- dominate or interfere with the formation or administration of any employee organization, or contribute financial support to it, or in any way encourage employees to join any organization in preference to another; or
- refuse to participate in good faith in the statutory impasse procedures.

Similarly, a union that engages in unfair practices may subject itself to charges by the district. It is unlawful for the union to:

- cause or attempt to cause a public school employer to commit unfair practices;
- impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain or coerce employees because they exercise their rights;
- refuse or fail to meet and negotiate in good faith; or
- refuse to participate in good faith in the statutory impasse procedures.

2. Avoiding a Strike

Sometimes a union has reasons for calling a strike that have more to do with building its own membership and strength than with an inability to come to agreement with the board over contract terms. In these cases, there is very little that the board and superintendent can do to avoid the strike. On the other hand, some strikes can be avoided through ongoing positive relations, an effective approach to negotiations, contract and board policy language that prohibits or discourages strikes, and/or impasse procedures provided by law to resolve differences before a strike.

Positive Relations

A strike is less likely to occur when there are positive relations between the board and employees, the board and employee representatives, and the board and community. The board must recognize the importance of paying attention to school climate, employee morale, parent and community involvement, and the behavior and attitude of its own members toward each other, staff and community members. A high level of respect and trust builds a sense of fairness and professionalism that will help when it is time for negotiations.

The board should not wait until negotiations are under way before it considers ways it might build these positive relationships. Instead, it should have in place a comprehensive plan to build community, media, business and staff support. This plan should include strategies for effective, ongoing communications. Such a plan typically includes an identification of key issues to be communicated, target audiences, strategies and activities tailored to each target audience, and responsibilities of individual board members, the superintendent and communications staff (California School Boards Association, 1996b).

In addition, efforts to promote parent and community involvement in schools through volunteer activities, school organizations and other partnerships may build interest in the affairs of local schools. Participation of both staff and community members in school decision-making structures and in board meetings may also build a greater sense of belonging. All these efforts should not only reduce the possibility of a strike but should increase the credibility of the district in case a strike does occur and lay a stronger foundation for rebuilding relations after the strike.

Effective Negotiations

> *"By all means establish and support a process that requires the parties to talk to each other about real needs. . . . Do not let the process take over and, if this appears to be happening, change the process."* (Dannis, 1996)

The district's approach to negotiations with employee unions and the manner in which these negotiations are conducted could have an influence on whether or not the district and union are able to come to agreement without a strike.

Effective negotiations start with the board's ability to reach consensus about district positions, its clear direction to its negotiations team and its diligence in performing all its related responsibilities. As described by CSBA (1996a), the board's basic responsibilities related to collective bargaining are to:

- understand the process and set priorities which reflect the district's vision and consider the needs of students, employees and operational demands;
- create a framework for negotiations by determining the approach to negotiations; selecting a negotiator to represent the district; defining roles of the superintendent, staff and board; and setting parameters regarding contract items;
- monitor the process and provide direction during the negotiation of the contract;
- vote to accept the contract upon completion of negotiations;
- monitor administration of the contract, without being directly involved in implementation;
- plan for emergencies and provide leadership if there is an impasse or strike; and
- continually review and adjust the contract and bargaining process.

"It is important to realize that, while strikes can be extraordinarily unpleasant for everyone, the board may have to accept one rather than agree to items which would hurt the long-term fiscal condition of the district." (California School Boards Association, 1996a)

Therefore, it is the board's responsibility to find a negotiations model that best suits the situation in its district (e.g., industrial model in which formal proposals are exchanged by each party's spokesperson; interest-based model which approaches negotiations from the standpoint of identifying each party's interests and finding mutually satisfying options). Any process could be successful as long as the district and union have mutual respect and trust each other to present factual information.

"One of the keys to successful collective bargaining is to address the problems when they're small instead of letting them build up day after day, week after week and month after month. "It's like a time bomb; if you can get to it and diffuse it before it detonates, then you're better off." (Shelby Wagner, associate superintendent of Human Resources, Corona-Norco Unified School District, cited in McFadden, 1996 Winter)

If the process does not appear to be working, the district may need to consider revising it. The district and union might jointly create a small group or task force to explore one or more of the key issues in greater depth and to report back, or they may institute "off the record" meetings with a small group such as the district's negotiator and superintendent with the union president and officials (California School Boards Association, 1996a).

As the negotiations proceed, the board should monitor the process and look for warning signs of a potential strike (see p. 19). It may be able to take action during negotiations to avert a strike.

For example, the board should remain open to alternatives to try to reach a middle ground in negotiations and should look to the superintendent or responsible administrator to seek creative ideas for reaching a mutually acceptable agreement. The board should not become so entrenched in its positions that it is unwilling to compromise, unless to do so would damage the fiscal health of the district or the education of the children. The board, working with the superintendent, is responsible for setting parameters on acceptable contract provisions. In doing so, the board must assess whether the district's proposals are worth the risk of a strike and whether the union's proposal is so bad that the district would endure a possible strike to reject it. If the board believes that its position is worth the possible consequences, the board should stand firm.

Therefore, simply giving employees what they want is not an appropriate way to end a dispute over contract terms. In addition, pretending to bargain by going through the motions without serious intention to consider alternatives is not an appropriate method, nor is responding aggressively by trying to demean the union. A more appropriate response is to become more sophisticated and more skilled in dealing with collective bargaining (Booth, 1993).

Preemptive Contracts and Policies

No-strike Clause

Sometimes districts are able to negotiate explicit no-strike clauses into collective bargaining agreements in hopes of preventing employees from striking in the future. Such clauses can provide a district with some leverage in that they open up the possibility that the district could sue for breach of contract if employees strike, and this threat alone might inhibit a union from striking.

A no-strike clause in an employee contract is not a guarantee that the district will never need to worry about a strike; after all, strikes usually occur after the termination of the contract. However, it can be effective during the contract period to prevent strikes over grievances or during contract reopeners on other clauses (Association of California School Administrators, 1995).

To be most effective, a no-strike clause should:

1. prohibit any kind of withdrawal of service;
2. require the union to affirmatively disavow the strike;
3. provide potential penalties against the union;
4. provide potential penalties against strikers;
5. include an "evergreen" clause that provides an opportunity to reopen the contract upon sufficient notice and extends the length of the contract "until impasse has been declared and the statutory impasse procedures have been exhausted"; and
6. clarify whether the union is also waiving its right to conduct a sympathy strike by honoring other unions' picket lines (Association of California School Administrators, 1995).

Personnel Policies

The district should review its board policies, administrative regulations and collective bargaining agreements to close any loopholes that might allow employees to strike without consequences.

For example, to protect the district from a sick-out, sick leave policies should allow the district to require verification of any absences — either by requiring the employee to bring a physician's note and/or by allowing the district to have its own physicians independently examine any allegedly ill employee. The board should ensure that its sick leave policies do not specify a number of days after which verification will be required. In a recent PERB case, it was ruled that a district could not verify employees' absences during a sick-out because it had a policy of requiring physicians' verification only after five days of absence. Without verification of actual illness, it will be difficult to prove that the union is responsible for an organized sick-out or to prove that the employee's absence was not legitimate.

Sick leave policies must be negotiated, however. Unilateral implementation of such a policy by the district could be considered an unfair labor practice.

Other policies that might be relevant include those related to other paid leaves and benefits, working hours, work assignments and extra-duty assignments (e.g., required vs. volunteer duties) and temporary/substitute personnel.

When policies and collective bargaining agreements do not address certain personnel issues, PERB may consider legitimate past practices by the district. Therefore, it is important to also review district practices and to anticipate issues as much as possible in order to develop written policies and procedures.

Statutory Impasse Procedures

If the district and union reach a stalemate on issues during negotiations, either or both parties may declare an impasse. The EERA provides procedures to assist in such situations in hopes that the district and union will still be able to arrive at an agreement (Government Code Sections 3548, 3548.8 and California Code of Regulations, Title 8, Sections 32791-32800). These impasse procedures involve two steps: mediation and factfinding. Except in limited circumstances, a union cannot lawfully begin a strike until the union and district have made an attempt to resolve their differences by participating in good faith in these procedures (see "Legal and Illegal Work Stoppages," p. 5).

If the district and/or union have declared an impasse either orally or in writing to the other party, they may request that PERB confirm the impasse and begin impasse procedures. A written request to PERB must include the number and length of negotiating sessions to date; the status of the negotiations, including the number and subject matter of issues on which the parties have reached tentative agreement and the number and subject matter of issues which remain in dispute; a description of the extent to which parties have made counterproposals; any facts which indicate that mediation is necessary; and other information as specified in the California Code of Regulations, Title 8, Section 32792.

Tips for Successful Mediation

Be pragmatic. Inflexibility on positions creates the need for mediation. If there is flexibility, the mediator must know or the process is futile.

Be patient and calm. Mediation should move the parties away from the "at the table" environment to one in which the parties may discover a resolution to the impasse.

Support positions or needs with sensible reasons. The mediator must understand the party's positions so that he/she can effectively interpret them to the other party if and when appropriate.

Trust in the mediator's credibility, skill and confidentiality. Trust enables the parties to give the mediator the information necessary to explore options for resolving the disagreement.

Be serious about commitments to the mediator. A party's credibility is hurt and time wasted when a party makes commitments it is not sure it intends to honor.

Let the mediator guide the timetable for the mediation process. The mediator should have a sense of both parties' ability or inability to move forward.

From CSBA. "Resource Guide for Employment Relations." Key Subjects. April 1996.

Mediation

When an impasse is declared by either the district and/or the union and is confirmed by PERB, the first step in resolving the dispute is mediation. PERB will appoint an impartial, professional mediator who is usually an employee of the State Mediation and Conciliation Service, Department of Industrial Relations. It is important to understand that any mediator can only attempt to persuade parties to come to agreement; this is not a binding arbitration situation in which the parties agree to let someone else make the final decision about contract provisions.

The costs of the state mediator are paid by the state. The district and union do have the option of selecting their own mediator and agreeing to their own mediation procedure, but the costs would need to be shared equally by the parties rather than the state.

While there is no standard mediation procedure, a mediator will likely meet with both bargaining teams together and individually, and with team spokespersons together and individually. Meetings with the mediator may be held in closed session (Government Code Section 3549.1).

These meetings are designed to provide the mediator with an understanding of the facts and emotions that have sparked the disagreement. The mediator will seek to determine the needs of each party which must be met in order for agreement to be possible. The mediator will try to develop solutions (new proposals or changes in proposals) which may be advanced by either party, both parties or the mediator.

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If the mediation results in a settlement, the resulting contract proposals are included with the entire agreement, if appropriate, and each party accepts the agreement. If mediation is unsuccessful, the mediator may declare that the second step of impasse resolution — factfinding — is appropriate.

Factfinding

The factfinding process involves a three-person panel which meets with both parties, conducts investigations, issues its findings regarding the facts and recommends terms of settlement (Government Code Sections 3548.1-3548.3).

To begin the process, the mediator must declare in writing, no sooner than 15 days after his/her appointment, that factfinding is appropriate. Then either the district or the union must notify the other party that it is requesting that their differences be submitted to a factfinding panel.

The factfinding panel includes a representative from the district, one from the union and a neutral chairperson. Each party must select its panel representative within five days after receiving the written request from the other party to submit the dispute to a factfinding panel. Within five days after the district's and union's panel members are selected, the chair is selected from a list of professional fact-finders supplied by PERB. PERB supplies a list containing an odd number of names from which the parties may choose a chair or may alternately strike off a name to arrive at the chair. The chair cannot be the same person who served as mediator without the consent of both parties.

Within five days of the selection of a chair, the parties may agree to a person other than the person appointed by PERB but would then be responsible for the costs. Otherwise, the costs of the chair will be paid by PERB.

The district and union are responsible for preparing a statement of the issues to be placed before the panel. PERB regulations encourage joint filing of the statement if possible, although the parties may file separate statements if they disagree about the issues to be placed before the panel.

By law the panel must meet with the parties, either jointly or separately, within 10 days of its appointment. (In practice, this almost never happens and the parties waive the timelines.) The panel may also make inquiries and investigations, hold hearings and take any other steps it deems appropriate. It may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

If a factfinding hearing is held, there are no specific statutory guidelines for how the hearing is conducted. Any hearing, meeting or investigation conducted by a fact-finder is exempted from the open meeting laws of the Brown Act (Government Code Section 3549.1), so each party generally has an opportunity to present its case to the panel in a closed meeting.

A district's case often focuses on an argument that the district does not have the financial ability to pay for any employee compensation increases. In such situations, CSBA (1996c) advises the district to present not only its current financial situation but also its past budgeting history in order to establish credibility. If a

district has a history of significantly underestimating income and overestimating expenses, or transferring general fund income to a special reserve without concrete and reasonable plans for spending money, it will be very difficult to prevail with the ability-to-pay argument. A district's argument should consider that on-the-schedule salary increases must be supported by ongoing income; it is possible to be able to pay a one-time lump sum or to have a reserve built up over a period of years and yet have no ability to pay for an ongoing expense.

No matter how poor a district is, it cannot rely solely on an ability-to-pay argument. The district must also gather accurate comparative data about similar districts. The most common comparison group would be districts of similar size, type (elementary, unified or secondary), location and funding level. The district should be sure to compare with districts that are truly similar by collecting financial information that includes revenue limit and total income per average daily attendance. The district also needs to have evidence of average class size, average teacher salary and dollar amount of the benefit package in comparable districts. In other words, the district should try to paint a complete picture — salaries in one district may be higher because its classes are much larger, and a district may have a high salary schedule but a young staff earning comparatively low average salaries.

Following the hearing and any other investigations, the factfinding panel makes its findings of fact and may suggest one or more settlements which are *advisory only*, not binding. In making its recommendations, the panel must consider the following criteria (Government Code Section 3548.2):

1. state and federal laws that are applicable to the employer;
2. stipulations of the parties;
3. the interests and welfare of the public and the financial ability of the district;
4. comparison of the wages, hours and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities;
5. the consumer price index of goods and services, commonly known as the cost of living;
6. the overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received; and
7. any other facts which are normally or traditionally taken into consideration in making findings and recommendations.

Sometimes, the district and union reach agreement during the factfinding process before the panel issues its recommendations. However, if no agreement is reached within 30 days of the factfinding hearing, or longer if mutually agreed upon, the panel issues its report. This report is submitted privately in writing to the parties and must be made public by the district within 10 days of receipt. The parties are required to give good-faith consideration of the factfinding report but are not, in every case, required to engage in further discussions or negotiations (Charter Oak Unified School District (1991), 15 PERC 22067). Other options available to the district and union at this point are discussed below.

Next Steps

Hopefully, the impasse procedures will be successful in helping the district and union arrive at a collective bargaining agreement that can be accepted by the board. If the parties are unable to arrive at an agreement even after completing both the mediation and factfinding procedures, the district and union have several options:

1. The mediator appointed for the first stage of the impasse procedures may be asked to resume mediation efforts on the basis of the findings and recommendations of the factfinding panel (Government Code Section 3548.4).
2. The parties may continue negotiations on their own. In fact, if the union makes substantial changes in its position, the district has a continuing duty to bargain (Rowland Unified School District (1994), 18 PERC 25126).
3. If the union makes no substantial changes in its position, the district may choose to implement the "last, best offer" it presented at the bargaining table. Unilaterally adopting the last, best offer requires that the district has participated in negotiations and impasse procedures in good faith and that it has publicly disclosed contract provisions. Adopting a last offer, however, is a very complicated matter which should be undertaken only with advice of legal counsel.
4. The board may choose to do nothing and continue under the terms of the expired contract.
5. The union may decide to go on strike.

3. Preparing for a Strike

In the event that employees do strike, strong preparation is the key to reducing the disruption to the district and community, coming out of the strike with a workable contract and having the best chance for rebuilding relations.

Preparation begins with an appropriate attitude — the board must recognize that a strike is always a possibility. No matter how good relations seem to be with employees and with their union, and no matter how fair the board's positions seem to be, no district is immune.

A district can, however, be better prepared by looking for the warning signs that a union is about to go on strike and by developing a comprehensive strike plan.

"[T]here is no definite checklist which can be used to predict a strike. Strikes involve the actions and thoughts of people. Human nature is something that is not capable of concrete predictions. However, by doing your homework and by being aware of what is going on in and around the negotiations, [you] can often sense when there is a strong possibility of a strike." (Ohio School Boards Association, 1996)

Warning Signs

The time to begin thinking about potential problems is before negotiations have even begun. Although it is impossible to predict what events will lead to a strike, an attentive district can often pick up the warning signs.

As soon as a contract is settled, the district should, as the Ohio School Boards Association (1996) advises:

1. ***Review past bargaining sessions***. This process should include a review of proposals and counterproposals that were not included in the final settlement. Very often, such issues find their way to the table again. It is important to recognize whether the union left the table with the attitude of "well, we didn't get it this time, but next time..." It is also important to be aware of events that occur during the term of the contract which may give the union new arguments on an issue (e.g., the district had previously argued that an issue was simply not a problem in the district but situations have arisen which indicate it might now be a problem).
2. ***Review all grievances filed during the term of the contract and any other complaints raised by the employees***. These are often valuable barometers for what issues will arise at the table and what their importance will be.
3. ***Review what neighboring districts went through to reach their settlements***. The district should pay particular attention to wage settlements in neighboring districts and determine what the district would have to offer in order to remain competitive.
4. ***Talk with and listen to administrative staff***. They are the district's "ears" during the term of the contract and will also be the ones on the firing line of the strike. They must be made to realize that they are part of the management team, and the superintendent must be aware of what they are thinking and saying.

Prior to negotiations, the union may implement strategies that may be warnings of difficulties to come. The union may increase the number of grievances, send letters to the union membership indicating their wages near the bottom when compared to comparable districts or perhaps even send a letter requesting that negotiations begin early due to the number of "serious issues" that need to be addressed during negotiations (Michigan School Boards Association, 1993).

Most of the warning signs, however, occur at the bargaining table. As the district enters the current round of negotiations, it should observe and analyze the climate around the bargaining process to determine if the situation is escalating. Warning signs include:

1. ***Polarization of positions at the table***. The union is expressing its demands in absolutes (e.g., "5 percent salary increase or no contract").
2. ***Escalation of demands***. The union increases a base salary proposal in response to a board salary counteroffer.
3. ***Loss of control or lack of cohesiveness at the table***. The union representative is unable to prevent team members from chiming in on arguments, or are members in fact contradicting union leaders.
4. ***Attempts to discredit or divide the district's team***. Rumors, half-truths and personal attacks may be spread among the union members or the community in order to reduce confidence in the competency of the board or negotiator. The union also may try to pit the board against the superintendent or undermine the board's confidence in its negotiator.
5. ***An unwillingness to listen to information provided by the district in support of its bargaining positions***. The union may deny the accuracy of the district's information or may simply be uninterested in hearing it.
6. ***Initiation or escalation of media contact and other public pressure***. There may be an increase in the amount and fervor of union-backed bargaining updates to the membership, the appearance of union complaints in the newspaper or on radio talk shows, mass attendance at board meetings or direct pleas to community members and groups to get involved.
7. ***Allegations of "bad faith" bargaining or claims that the board is purposefully stalling or delaying negotiations***.

Of course, final warning signs occur when the district and union must participate in statutory impasse procedures (see p. 14) and, in some cases when those procedures fail, the union threatens or actually initiates a strike by announcing a membership strike vote or establishing a strike deadline.

Strike Plan

Preparations for a strike should include development of a written plan by the superintendent, other management staff and legal counsel. Such a plan should cover a broad range of issues that will face the district but should be flexible enough to allow for changes depending on how well implementation is working.

"Having a well-prepared advance plan for dealing with a strike may well be one of the most significant things that can be done to avoid a strike. As school districts become better prepared to deal with strikes, it is likely that the overuse of strikes as bargaining weapons will diminish, if not disappear." (Pennsylvania School Boards Association, 1996).

The strike plan should address specific roles the board and various staff members will perform during the strike. It should also address district operations, communications and safety issues. When developing the plan, the district should ensure that it has the resources and legal advice to implement the plan in an emergency.

However, not all pieces of information should be put into the strike plan. The district should make every effort to secure the strike plan but needs to consider that, regardless of security, it will be difficult to keep details of the plan confidential. Highly confidential information, or information that would jeopardize the district's negotiations, may be omitted from the written plan as long as key individuals agree to and are aware of the various strategies.

Chapter 4 describes the issues that will arise during the strike and how the district should address these issues in its strike plan. Among the issues to be considered by the district are:

- roles and responsibilities, including responsibility for coordinating implementation of the strike plan and roles of the board, superintendent, principals, classified staff, substitutes and working employees;
- feasibility of keeping schools open;
- plans for obtaining, paying and communicating with substitutes;
- status of district-paid benefits;
- maintenance of the educational program (availability of lesson plans and instructional materials; alternatives for handling special education, vocational/technical and other programs as appropriate; etc.);
- equipment and supply needs;
- feasibility of conducting extracurricular activities;
- contingency plans for transportation;
- provision of food services if those workers are on strike;
- identification of outside resources who may be called upon to help with the operation of the school program in the event of a strike;
- coordination with law enforcement and other agencies;
- appropriate safeguards for the safety of students and staff;
- internal communications among district staff during the strike;
- communications with parents;

- communications with media, including designation of spokesperson(s) and development of a communications plan;
- communications with business partners, public officials and other community leaders;
- provisions for safe, effective board meetings;
- costs of the various strategies to be implemented during the strike;
- legal recourses for stopping the strike (e.g., injunction); and
- plans for the continuation of negotiations.

The district may already have policies or contract language dealing with some of these issues. Such policies need to be reviewed, long before a strike occurs if possible, to ensure that they provide sufficient flexibility and protection to the district in the event of a strike.

"Ideally, strike plans should be developed when you are not involved in negotiations. The strike plan is like one of your policies dealing with the manner in which your district and your administrators will respond to an unexpected, and really unanticipated, emergency. It's there in case you should ever need it, even though the chances of implementation may be one in a million." (New Jersey School Boards Association, 1996)

Many boards adopt a resolution when a strike is pending to clarify certain actions that will be taken during the strike and to reiterate the authority of the superintendent to act on behalf of the board in certain situations. A resolution could be used, for example, to declare the board's intent to keep schools open; institute emergency procedures to ensure the safety of students, employees and property; and provide the necessary staffing to maintain the district's education program. It might set the rate of pay for substitutes, authorize the superintendent to close schools if necessary or authorize the superintendent to purchase or lease any services or equipment needed during this emergency situation. Legal counsel should review this resolution to ensure that the district is not unlawfully adopting policies that should properly be negotiated.

Notifications

Once the union has given notice that it intends to strike, the district should notify appropriate agencies, groups and individuals. If possible, these notifications should occur prior to the strike. The district should communicate with:

1. ***PERB***. PERB will already be aware that impasse procedures have taken place and that the district and union have failed to reach agreement following the factfinding report. Nevertheless, PERB should be notified when the union has given notice of a pending strike in case the district might file an unfair practice charge or request injunctive relief.
2. ***Employment Development Department.*** California's Employment Development Department will give the district the necessary report forms to identify striking employees and sympathy strikers so that they do not receive unemployment insurance benefits.
3. ***Employees in the striking unit.*** The district may wish to communicate with employees by letter prior to the strike date. Because of the potential for inadvertent commission of an unfair labor practice, all such communications should be reviewed by legal counsel.

   Any such communication should be factual and noninflammatory. The district may wish to review the consequences of the strike as well as check-out procedures for striking employees. For example, the district may wish to tell employees about:

   - the district's intent to continue operating its schools;
   - employees' right *not* to participate in the strike if they wish to continue working;
   - the last, best offer which the district made to the union;
   - the fact that employees who do not work are not entitled to receive compensation or unemployment insurance benefits for that period of time;
   - the status of health and other benefits;
   - the status of employees' service credit;
   - payment of the final regular paycheck;
   - the need to verify absences due to illness (if a sick-out is threatened and the district's policy provides for verification);
   - cancellation of professional development days;
   - the district's intent to protect the safety of students and employees who cross the picket line;
   - strike conduct that is unlawful (see "Behavior During Strikes," p. 8); and/or
   - check-out procedures, including the return of keys, student records, textbook manuals and teachers' guides, lesson plans, district equipment and supplies.

   If the district receives inquiries from employees, the district may provide factual information about employees' right to resign their union membership, as long as this information is not accompanied by threats, coercion or anti-union sentiments.

   In communications with employees, the district may *not* tell employees they will be discharged for engaging in a strike or for honoring a picket line, nor may it induce employees to return to work by offering any higher wage rate, better benefits or working conditions than those in effect prior to the strike (Association of California School Administrators, 1995).

4. ***Employees in nonstriking units***. Other employees should be notified of the consequences that would occur if they participate in sympathy strikes by refusing to cross the picket lines of the striking union, including loss of compensation and unemployment insurance benefits. They should also be assured that the district is taking measures to ensure their safety if they work. Finally, they should be notified if the strike is expected to impact their workload or assignments.

   Union officials of nonstriking units also should be contacted and asked to encourage employees in their units to come to work and to fulfill their responsibilities for the sake of the students.

5. ***Parents and students***. The district should send a straightforward, positive letter to students and their parents which explains that schools will remain open and discusses any changes in schedules as soon as possible. This letter should also reassure parents that substitute staff is qualified, safety precautions are in place and the educational program will continue as normally as possible using existing lesson plans and materials. If extracurricular activities will be affected, this should be noted. Expectations for students should be explained, including the continuation of daily attendance tracking, homework assignments, grading and so on.

6. ***Media and other community leaders.*** District communications with the media and other opinion leaders in the community should have begun during negotiations to lay the groundwork for the district's bargaining positions and the potential impact of the union's positions on the district. Relations with the media and the community are even more important once a strike is imminent. The district should keep the media informed with factual information during the strike (see "Communications," p. 42).

7. ***Law enforcement***. Local law enforcement should be notified about the pending strike and asked to lend extra support at building sites, picket lines and board members' homes and businesses.

8. ***County office of education***. The county office of education may be able to serve as a resource for the district in terms of providing staff assistance, lists of substitutes or other resources.

9. ***CSBA***. CSBA monitors strike activity in California and offers assistance to school boards and districts during a strike.

4. During a Strike

Although it is possible to provide some general guidelines about district strategies during a strike, each strike has its own unique characteristics that make it necessary for the board to develop strategies that fit its own circumstances. When a strike occurs, the district should immediately review and begin implementing its previously prepared strike plan (see "Strike Plan," p. 21) addressing various issues discussed in this chapter.

Many districts choose to establish a "command center" for all strike-related activities. Many also establish a strike coordination team or committee to oversee the implementation of the strike plan, serve as a focal point for all internal and external communications and provide additional recommendations to the board and superintendent as necessary as the strike progresses. It is important that this team understands its authority and responsibilities. In addition, the district should meet with all administrators and other appropriate staff to ensure that they understand their roles and responsibilities during the strike, and to provide a support structure for the stressful times ahead. Board members also need support during these times and need to work as a team.

During a strike, priorities will be to maintain district operations and ensure safety for students and staff. Effective communications with the media, business partners, elected officials and other community members will be essential to publicize the district's positions and garner support for the district in its continuing negotiations with the union. The district also needs to be aware of situations in which it might be appropriate to use legal means to stop the strike.

PERB has upheld the right of districts to take prudent actions to prepare for a strike, including arranging to hire substitutes and security guards, authorizing appropriate legal action, requiring employees to turn in keys as a security precaution, requiring teachers to submit lesson plans for substitutes to use and refusing to pay strikers for time not worked, including benefits. A district cannot, however, suspend a union's statutory rights (e.g., dues deduction; access to mail, bulletin boards or meeting rooms), suspend the grievance procedure or make changes in leave policy, including sick leave verification, without bargaining (Modesto City Schools (1983), PERB No. 291, 7 PERC 14090).

It is unclear whether public employers in California have the same rights as employers in the private sector to impose a lockout in response to a strike. No PERB or state court cases have dealt with this issue. The extent to which a district can lock out employees would have to take into consideration the considerable statutory due process protections to which California public employees are entitled, and is *not* recommended as a strategy.

Response to Union Pressure Tactics

During a strike, board members and district staff can expect to experience intense political and psychological pressure from the union. Union strategies may range from attempts to sway public opinion to acts of vandalism or theft. Such activities may occur at board meetings, the district office, schools, board members' businesses or homes. As in other aspects of the strike, the best defense against such strategies is good preparation, including an understanding that the union truly is capable of such activities.

"If we had not been meeting regularly as a board and maintained a cohesive front during the . . . strike, the union would have isolated us individually, which is their strategy. They even got to one board member's spouse, but they could not get to any one of us. Once they realized they couldn't break a majority of the board, they went back to the table." (Shirley Weber, board member, San Diego City Unified School District, cited in McFadden, 1996 Winter)

What kinds of activities might the district expect? Pressure tactics that have been used by the union or its members in some cases include the following (Michigan Association of School Boards, 1993; New Jersey School Boards Association, 1996; Ohio School Boards Association, 1996; Pennsylvania School Boards Association, 1981):

1. ***Propaganda, misinformation, incomplete information***. Propaganda may be used by the union both to convince its own members of the need to strike and to galvanize the public against the district. It may be in written form or spread by word of mouth. Union newsletters or bargaining updates may be filled more with rhetoric than factual information. They may also attack and attempt to discredit the board, the superintendent or the district's negotiator. Efforts to build the support of union members probably will begin long before the strike — when the union indicates its dissatisfaction with the district's initial proposals and tries to control the information that its membership receives.

   Efforts to build parent and public support for the union will try to paint the board as insensitive to employees and challenge the credibility of the board. Teachers may try to capitalize on their closer contact with parents to convince them that information supplied by the district should be disregarded. The union may establish its own "crisis center" to dispense what it calls "the truth" or may publish community bulletins or place newspaper advertisements in order to tell their "truth" about the appalling conditions in school buildings that remain open during a strike and the alleged danger to children. Propaganda might also be handed out by picketers to any parents crossing a picket line to bring their children to school. A favorite target is sporting events — the union could stir up a segment of the community by the mere suggestion that a game is not going to be played.

   Often unions attempt to divide the issues into "good" causes (i.e., the union's) which are supposedly based on strong concerns about students, programs, facilities, parents and the community, and "bad" causes (i.e., the district's) which are self-serving or politically motivated.

2. ***Use of well-intentioned community members and groups to pressure the board***. Concerned citizens, business and community leaders, state and local elected officials, neighborhood organizations, other employee unions and school groups will be anxious to see an end to the strike. The union may convince such individuals or groups that the district is being unreasonable and encourage them to put pressure on the board to settle the strike or conduct around-the-clock bargaining sessions. A board member may receive phone calls from individual teachers or constituents pointing out personal friendships, business relationships or common social affiliations. The caller may try to convince individual board members to intervene because of their support for the education system or natural facilitation skills. Board members need to be wary of any appeals that are simply a diversion by the union to shift attention away from the real issue: settlement of the contract.

"No matter how much you think you are prepared, you are not ready for the amount of personal attacks. Our homes were picketed and graffitied, we received death threats, and they even put out leaflets with our home numbers on them. My voice mail was full by 10 o'clock every night." (Jean Quan, board member, Oakland Unified School District, cited in McFadden, 1996 Winter)

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3. ***Appeals to support the strike***. Striking elementary school teachers have been known to tell students to go home when they reach the building because school is not in session. High school students have been urged to stay out of school and support their teachers on the picket line.

4. ***Allegations that serious problems are present in the schools***. The union may convince parents that no real teaching is going on during the strike, only baby-sitting, or that the schools are unsafe. Parents, encouraged by the union, may demand "public records" such as payroll ledgers and invoices.

5. ***Pressure on the board to change the negotiating team or conduct the negotiations itself***. The union may attempt to undermine the board's confidence in its negotiations team and force the board to make changes in the process or personnel, causing confusion and leading to a greater likelihood that the union will be successful in achieving its bargaining goals. Often board members will hear that the board's negotiator "caused" the strike.

6. ***Efforts to fragment relations between the board and superintendent***. The union may try to undermine confidence in the superintendent and drive a wedge between the board and superintendent. The union may openly attack the superintendent with a no-confidence vote or covertly spread rumors of poor management, unethical behavior or low employee morale in the district. This approach can magnify unstable board-superintendent relations or undermine positive relations.

7. ***Efforts to remove board members from office***. Since the board ultimately makes the decision about the district's contract, the board is the real target of the union. Union calls to recall board members or, in an election year, to vote board members out of office are not uncommon. Unions may try to convince the public that the board is at fault in the negotiations and is responsible for the strike. And, ultimately, the union may be able to gather public support for its efforts to remove board members from office.

8. ***Boycotts of board members' businesses or their supporters' businesses***. The union may encourage its members and supporters to boycott and/or picket board members' places of employment or businesses which support the district. Because this is sometimes done on a personal level, it may feel as though board members are being singled out and may serve to further fragment the board.

"The success of a strike in the eyes of the union depends on the amount of disruption it can cause the district in order to gain either public support for its position or public outrage directed at the board." (California School Boards Association, 1996a)

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9. ***Disruption of board meetings***. The union may attempt to stack the board room with large numbers of union supporters well prepared to speak up on strike-related issues.

10. ***Litigation or unfair labor practice charges***. Increasing the number of grievance complaints or lawsuits will disrupt the district and give the union ammunition to make its case that the district treats its employees unfairly. The filing of unfair labor practice charges against the district (see p. 9) is a common tactic used by the union to justify the need for a strike, gain public support for its positions or elicit a desperation move by the board. Even if PERB rules against the union, the charge may have served its purpose.

11. ***Intimidation of substitutes and regular employees who cross the picket line***. The district will be able to keep schools open only if it can secure enough substitutes and employees willing to cross the picket line. Knowing this, the union will try hard to discourage or frighten employees away. Union members may chase cars to get license numbers, place threatening telephone calls to employees' homes or harass substitutes and employees as they attempt to enter school buildings.

12. ***Disruption of deliveries and other vendor services***. Reducing the district's access to supplies and services is another effective way of disrupting operations and making it more difficult for schools to stay open.

13. ***Jamming of the district's telephone lines***. A coordinated effort to have large numbers of union members call the district makes it very difficult for the district to conduct business and maintain communications with the strike team and other staff. Parents and members of the public also become frustrated when they are unable to get through to the district and get responses to their questions.

"If these things happen, be of good courage. You are not alone. The same thing has happened to every school board member [who] has ever gone through a strike. Moreover, the tide will go out just as surely as the tide came in." (Booth, 1993)

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14. ***Theft or removal of equipment and educational tools***. Educational materials and equipment may suddenly be "lost" or unavailable — keys to critical cabinets missing, projection lamps removed, microphones to the public address system gone, lesson plans not available to substitutes.

15. ***Vandalism***. Unfortunately, some union members or supporters will resort to acts of vandalism toward the school, administrators, board members, substitutes and regular employees who are working. Targets may be school buildings, buses and cars that belong to substitutes or nonstriking employees.

What can the district do? Most important, the board and superintendent must stay calm, united and focused on the district's goals. They should consider, preferably before the strike, what their responses would be to such tactics. They should develop new strategies as new situations arise. And when the pressure gets to be too much, they should seek support from each other and from other board members outside their district.

Effective strategies for responding to pressure tactics include but are not limited to the following:

1. Be well prepared for any situation and any tactic the union might use.
2. Do not give in to pressure tactics.
3. Be honest and stick to telling the facts.
4. Define roles and responsibilities of key players and commit to strong teamwork.
5. Present a united front. Save disagreements for closed sessions of the board
6. Keep the district functioning and schools open.
7. Increase security at schools, district offices and board members' homes.
8. Let board members' spouses and children know what to expect.
9. Collect keys and other equipment when notice of a forthcoming strike is given.
10. Arrange for audio or video recording equipment to be at each school site in case it is necessary to document actions by strikers.
11. Arrange to have extra supplies and equipment on hand prior to the strike.
12. If vandalism does occur, photograph the damaged property and get statements from observers and witnesses.
13. Contact law enforcement if union members engage in criminal behavior.
14. Establish a well-defined system for internal and external communications.
15. Communicate with the media — accurately and on a regular basis.
16. Install additional telephone lines with unlisted numbers in the offices and homes of board members to limit nuisance calls.
17. Develop measures to ensure that classrooms and students are not used for propaganda purposes by the union.
18. Consider inviting parents who have genuine concerns to come to school and see for themselves that teaching is taking place.
19. Avoid being trapped into negotiating in public at a board meeting.
20. Make it clear that negotiations will be conducted by negotiators and not board members, and that the board has complete confidence in its team. Allow the district negotiator to continue to operate within predetermined guidelines.

Some of these strategies, and others, are discussed in the remainder of this chapter.

Roles and Responsibilities

An effective response to union strategies and to a strike requires a clear delineation of roles and responsibilities of the district's strike coordination team, board members, the superintendent and other staff. The duties that each of these players will perform during the strike should be delineated in the strike plan.

Strike Coordination Team

A strike committee or coordination team should be established to assume full responsibility for coordination of the district's strike plan and to serve as the point of origin for all internal and external communications regarding the strike (Michigan Association of School Boards, 1993; Pennsylvania School Boards Association, 1996). For instance, the team might be responsible for receiving and assessing daily reports from principals, summarizing the district's ongoing situation for the superintendent and board, carrying out elements of the strike plan and serving as an information clearinghouse for the community, principals, nonstriking employees and students.

As a general rule, the coordination team will operate most effectively when composed of a limited number of participants with expertise essential to the process. Typically, coordination teams are composed of the superintendent, a board representative, the district's chief negotiator, key administrators, legal counsel and the district's public information officer or other designee for public relations during the strike. One person on this team should be appointed to be responsible for the team's activities and for any information which will flow from this team; usually the superintendent fulfills this role.

In the absence of such a committee, the superintendent may wish to assign such responsibilities to particular district staff members.

"The lack of ability to stay together is what kills a board. Board agreements must be reasonable and iron-clad, and the board must be willing to stand by them." (Davis Campbell, executive director, California School Boards Association, cited in McFadden, 1996 Winter)

School Board

During a strike, the school board must continue to monitor negotiations to determine if agreement is possible. It may also be called upon to make policy decisions, approve plans and/or approve contracts for services or supplies needed to maintain district operations. The role of board members as community leaders and advocates will be essential in the implementation of the district's communications plan. Building the support of students, parents, the media and the community for the district's positions will require a comprehensive and coordinated effort with board members.

The manner in which board members operate sends an important message to the public about the quality of leadership of the community's schools and is especially critical during a strike. The board should keep in mind two underlying principles of boardsmanship:

1. It is the board, not individual board members, that is granted the authority to govern. It is the board that adopts a vision for the district, establishes policies that provide direction for the district and adopts budgets and collective bargaining agreements.

2. Board members' actions, both individually and collectively, should always be guided by what is best for the students of the district.

During a strike, board members must be prepared for attacks against the district and against themselves. Personal friendships and relationships may be tested and the integrity and honesty of board members may also be attacked. Board members may be subjected to a variety of union tactics. Even in the face of such pressure, the board must do its best to conduct itself in a professional manner. Board members should:

1. ***Present a unified front***. Once the board makes a decision — about its positions during negotiations, its plans to keep schools open during the strike, the need to cancel extracurricular activities, or anything else — it must stay firm and united. Otherwise, the union might capitalize on the board's perceived weakness and successfully use the classic strategy of "divide and conquer," approaching one board member at a time until a board majority is ready to give into bargaining demands. *Staying together as a team is perhaps the most important thing the board can do to help the district during a strike.*

2. ***Resist the temptation to strike back or get even***. Neither the board nor individual board members should make heated decisions or inappropriate statements about employees or their union.

3. ***Avoid assuming a mediator's role between employees, the negotiations team and/or board members***. Board members may have a desire to "fix" things themselves and to smooth over relations by assuming the role of a facilitator or mediator. However, in their desire to provide solutions, it is difficult for board members to stay objective and not compromise the positions of the full board.

4. ***Maintain confidentiality at all times***. The board's strategy and parameters should not be discussed outside closed session. Considerable damage can be done to the board's positions and the negotiation team's credibility if information or inappropriate communications are issued.

5. ***Demand and show respect***. It is appropriate to insist on some level of civility. During board meetings the board president is correct to interrupt someone whose emotions have gotten out of control. Calling for a recess — for a few minutes or even a few days — is an acceptable response when tempers flare out of control (Billings, 1989). At the same time, the board must show respect by being polite and civil even when under personal attack.

6. ***Listen carefully***. No matter how strong one's opinion is on an issue, it is imperative that everyone must listen carefully to the opinions of others.

7. ***Find counsel and support from other board members***. Being a board member in the middle of a strike may feel very lonely. Board members should know that they are not alone, and that they may seek comfort and advice from board members in other districts and from CSBA.

"Both the board and other administrators will look to the superintendent for direction in the strike. If the superintendent fails to plan, other administrators will not be able to do much to lessen the strike's success." (Association of California School Administrators, 1995)

Superintendent and Staff

The superintendent should assign responsibilities to district staff and oversee their performance of these responsibilities. The superintendent may head the strike coordination team, on which other key district staff will likely participate. All may have specific responsibilities in the implementation of the strike plan.

The superintendent is primarily responsible for making sure that the plan is working and that all issues are being addressed. He or she must be up to date about strike activities and continuing negotiations, and must keep the board informed on a daily basis. The superintendent is responsible for making certain decisions about school operations and must know when it is appropriate to seek board input and approval.

The superintendent must also provide support and encouragement to the management team. Even though the superintendent will be under tremendous pressure, he or she must be the one to ensure that stress does not hinder the district's efforts to withstand the strike.

A primary district contact and spokespersons should be identified (see "Communications Plan," p. 42). If the district has a public information officer, this person usually serves as the primary district contact, preparing or reviewing all communications from the central office to students, parents, the community, media and employees. However, he or she may not be the only spokesperson. The district must decide who has authority to speak for the district about strike-related issues — the superintendent, public information officer, board president, others? Sometimes board policy will already identify district spokespersons; the board should review this policy to ensure that it meets the needs of the district in a strike situation.

One central office staff member should be designated by the superintendent to manage all internal communications systems within the district, in order to combat rumors and misinformation (Ohio School Boards Association, 1996). This person may or may not be the same person designated to coordinate external communications.

The district's chief negotiator should work with the board and superintendent to develop a strategy for continuing negotiations during a strike (see p. 48) and should meet frequently with the board. He or she will assess the union's demands for settlement and the district's bottom line, and should ensure that all issues are resolved in the final settlement. Because of the negotiator's need to ensure confidentiality of discussions among the district team and to also maintain a good working relationship with union representatives, it is recommended that the negotiator not serve as a district spokesperson or make statements to the media.

If the district does not have its own legal counsel, the board should retain legal counsel if it appears that the district might be faced with organized protests and a possible strike. Legal counsel should recommend what legal actions, if any, should be taken before, during and after a strike. He or she should also review relevant board policies, contract language, board resolutions and notifications prepared for state agencies. If possible, legal counsel should be included on the district's strike coordination team.

Principals are on the firing line and will probably have firsthand information about strike activities and signs of trouble. The principal's responsibilities during a strike include: (1) ensuring that the school continues to function with maximum safety and efficiency; (2) acting as the direct link between the superintendent and the school site to provide a constant flow of accurate information about daily conditions or crisis situations; and (3) representing the district with students, parents, striking and nonstriking employees, and the public.

Since principals must work with employees who went on strike once the strike is over, they may be tempted to try to maintain a relationship with those employees. In some cases, principals have joined strikers with picket signs urging the public to "not support the strikers but to support education," or have provided coffee and doughnuts to strikers (Association of California School Administrators, 1995). However, such gestures may be interpreted as support of the union's positions and therefore interfere with the district's negotiations and/or cause resentment among nonstrikers. Principals must maintain a professional attitude with strikers but should neither argue nor attempt to make deals with them.

The superintendent should clarify the roles of employees who are not in the unit on strike. Do central office administrators need to be reassigned to cover vital areas that are left vacant by striking employees? Can nonstriking employees be asked to perform additional duties?

Maintenance of District Operations

Opening or Closing Schools

During a strike, schools should be kept open if at all possible. The district's first responsibility is to its students, so every effort should be made to provide students with an uninterrupted learning experience. The district also has an obligation to parents and the community to ensure that employer-employee disputes do not interfere with the district's high expectations for student learning.

"The most effective means of breaking a strike is to maximize the economic pressure on striking employees by continuing to operate with temporary staff. A decision not to attempt to operate narrows the focus of strike planning activity and tends to weaken the district's leverage against striking employees and the union." (Michigan Association of School Boards, 1993)

In addition, keeping schools open is important to the district's ability to outlast the union's strike and achieve its goals at the bargaining table. If a union knows that the district is prepared to stand firm in its positions and to keep schools open for an extended period of time, it will be less likely to engage in a strike. The threat of a financial loss to employees is the most powerful tool the district has.

Still, each district needs to decide if it would be feasible to keep schools open in its particular situation. In making that decision, the board and superintendent should receive input from other staff, including principals, and should consider the level of student, parent and community support.

Other considerations include the potential reduction in revenue and/or higher costs to the district. As long as the district provides the minimum number of instructional days mandated by state law, it continues to collect state funds. The district's ability to encourage full student attendance will be critical. The district will not have to pay employees who are on strike, but will have other costs to consider, such as the hiring of substitutes and increased security and communications efforts.

Finally, the district must determine its ability to find enough substitutes or other staffing, maintain the quality of the educational program, maintain other essential services and ensure the safety of students and employees.

The district must think about its ability to keep schools open if the strike goes longer than expected. Its position with the union would be severely damaged if it announced it would keep schools open but then found that it needed to close schools in a few weeks.

If the district has some but not all the resources needed to keep schools open, it might consider running a partial program and gradually building it up (Pennsylvania School Boards Association, 1996).

Staffing

A district's ability to keep schools open during a strike often hinges on its ability to find enough qualified substitutes.

The first thing the district needs to do is estimate the number of regular employees at each school site who will report to work despite the strike. This estimate should be a conservative one, keeping in mind that usually only a fraction of the staff in the striking unit is willing to work during a strike, that others may intend to work but find they are not able to withstand the pressure or harassment they receive from their colleagues on the picket line, and that some employees in nonstriking units may refuse to cross the picket line. Also, will nonstriking employees be willing to perform extra duties, and what jobs can administrators cover?

Once the estimates are completed, the district can determine how many substitutes it will need. Strategies such as team teaching may reduce the number of substitutes needed.

The district must abide by laws regarding the qualifications of substitutes. In addition, the district has other reasons to ensure the high qualifications of substitutes. The most important, of course, is the need to continue to provide students with the best education possible during the strike. In addition, the union will try to claim that the district is using inferior teachers as substitutes, so the district needs to be able to assure the community that qualified substitutes have been hired.

Where will the district find sufficient numbers of qualified substitutes? Sources of substitutes should be considered prior to the strike and included in the district's strike plan. These might include:

- substitutes currently employed by the district;
- substitutes currently employed by neighboring districts;
- qualified individuals from the district's applicant file;
- qualified individuals from other districts' applicant files;
- administrators, counselors, librarians and other certificated staff;
- student teachers; and
- parents or other volunteers who could take, or have already passed, the CBEST.

If the district advertises for substitutes, it should make clear that the substitutes will be replacing employees who are participating in a strike. The substitutes have a right to know the pressures they will be under if they accept an assignment in the district.

The district also needs to determine the rate of pay of these substitutes. Some boards adopt a resolution to increase the normal rate of pay for substitutes during the strike in order to attract larger numbers of substitutes and in recognition of the increased intimidation and harassment they may receive. Other boards, concerned about their districts' fiscal situation during the strike, use the base rate. Other forms of compensation are sometimes offered to substitutes during a strike, such as mileage compensation, the costs of other transportation or the payment of deductibles if any damage occurs to the cars of substitute teachers. (It is important to note that, if substitutes are part of the bargaining unit, the district may be unable to raise the level of compensation for substitutes without bargaining with the union.)

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In addition to the usual information substitutes need to conduct a class during a strike, substitutes need to be made aware of the potential hazards of crossing the picket line and the safety measures that have been instituted to protect them. When substitutes report for work, an orientation session is recommended. Substitutes might be asked to report to the school auditorium one hour before school opens on the first strike day so that they can be provided with procedures for entering and leaving the building; schedule of activities; a layout of the building; lesson plans, grade books and teaching materials; a class roster or seating chart for each class; emergency and/or evacuation procedures; a list of people who can answer questions; procedures for reporting harassment or threats; phone numbers for information and/or emergencies; payroll information; and any other relevant information. Substitutes should also be told not to discuss the strike with students, parents or the media, and not to cross a picket line if physically restrained from entering the school (Ohio School Boards Association, 1996).

It might be useful to have more frequent staff meetings after school, perhaps daily, to advise substitutes and other staff of the status of the strike and to answer any questions or concerns.

Payment of Wages and Benefits

The district does not need to pay employees for the period of time they are not working. During a strike, employees may be out for entire days, or they may try to work on a partial basis, reporting for some classes but not others or missing a back-to-school night. Therefore, it is important to have a system in place to check employees' attendance and document the hours that they are working and not working. In a partial-strike situation, a percentage of pay should be docked based on the number of duty hours missed each day.

However, if employees are scheduled to receive a regular paycheck during the strike *for work completed before the strike began*, the district must distribute that paycheck on the regular payday (California Labor Code Section 209).

Employees who participate in a strike (both strikers and those who refuse to cross a picket line in sympathy with strikers) are not eligible to receive unemployment benefits. The district should notify the Employment Development Department about employees on strike (see "Notifications," p. 23).

The question of whether or not the district must continue to pay benefits during the strike is less clear-cut and legal counsel should be consulted. The district may be required to continue certain benefits depending on the number of days employees are absent from work or to offer the employees an opportunity to pay for their own coverage. The district needs to be aware of its obligations or flexibility regarding the payment of health-care benefits, insurance, vacation time, sick leave and credit for service during a strike (Association of California School Administrators, 1995):

1. ***Health-care benefits***. Collective bargaining agreements or district policies usually specify the number of hours that employees must work before the district will pay for health-care benefits. If employees work that minimum number of hours in the month during which the strike begins, then the district must provide coverage. If they do not, then they must be offered the option of paying their own coverage under COBRA (Consolidated Omnibus Reconciliation Act of 1985).
2. ***Insurance***. Employees have a right to retain life and disability coverage by paying the contributions themselves (California Insurance Code Section 10116).

3. ***Vacations***. If a vacation has been authorized prior to the strike, the employee has a pre-existing right to vacation pay for that time. If employees submit new requests for vacation pay beginning on or after the date of the strike notice, the district should consult with legal counsel and review its contract, past practice and nature of the vacation request.

4. ***Sick leave***. If an employee is already on a paid sick or disability leave when the strike begins, benefits should continue to be paid as long as the employee remains disabled from returning to work and is otherwise eligible, even if he or she participates in the strike. If a striking employee falls ill and requests sick leave, it is less clear but appears as though the district may refuse to pay sick leave unless the employee affirmatively disavows his or her support for the strike. If a striking employee becomes truly disabled, he or she may be entitled to benefits under a disability policy set up pursuant to a collective bargaining agreement, but may have a duty to maintain his or her own premiums while on strike. Existing eligibility and verification rules should be maintained when the district is presented with new claims.

5. ***Credit for service***. In most short strikes it does not matter whether employees continue to earn service credit for the time they are on strike, but it could have an impact in a prolonged strike. The district is not required to give service credit to striking employees to apply toward probationary service, salary schedule advancement, tenure status, vacation earnings, retirement credit or sick leave accrual.

Educational Program

If schools are closed during a strike, the most serious repercussion may be the disruption to students' education. Students may find it difficult to meet grade-level standards and high school seniors may be hard pressed to complete their graduation requirements. The district would need to decide whether lost instructional days will be rescheduled.

"It is important to maintain a proper educational environment at all times that school is in session." (Ohio School Boards Association, 1996)

If schools remain open, the district must maintain a high-quality educational program and attempt to minimize the number of programs and students affected. The board and district staff have a responsibility to honestly assure the community that education is still occurring. Students and parents must understand that lessons are continuing and that grades given by substitutes during the strike will count.

Before teachers go on strike, the district should require that they leave lesson plans and grade books with the principal. (PERB has upheld the right of districts to make this requirement; see p. 25.) However, the district should develop appropriate grade-level instructional materials for substitute teachers in the event that lesson plans are not available. It also should make sure that other supplies are on hand to run an educational program.

To the extent that staffing is available, the district should attempt to keep school schedules and class assignments as normal as possible. If there is a shortage of staff, schools need to provide activities to keep students busy and controlled. Such activities might include prearranged educational films or television programs, assembly hall lectures or team-teaching large groups.

Students should not be left unattended. If necessary, students should be supervised by an available adult in a large facility such as a gym, cafeteria or auditorium until staff or substitutes arrive. Attendance must continue to be taken and monitored.

Extracurricular Activities

Opinions are divided about whether or not a district should continue to conduct extracurricular activities during a strike. Some believe that every effort should be made to keep athletic and extracurricular programs operating (Pennsylvania School Boards Association, 1996). Tremendous public sentiment and pressure will likely be on the side of continuing extracurricular events. If sports events or other activities are cancelled, it might be difficult to make them up. Furthermore, the continuation of extracurricular activities is further evidence that the district is able to withstand the strike.

On the other hand, some believe that "the more activities a district holds, the more chance for disruption. Therefore, any extracurricular activity that can be postponed should be, especially those which affect extremely small groups of children. While every effort should be made to keep the school open for educational purposes, extracurricular activities should not carry the same priority that normal school operations do. Such activities are not required as a state minimum or as a prerequisite for graduation" (Ohio School Boards Association, 1996, p. 29). If the district decides to cancel extracurricular activities, it must be prepared to make the public aware of its reasons and to stick by its decision.

Clearly, the district should consider the continuation of extracurricular activities only if it is also able to keep schools and the educational program running. For example, to allow employees to supervise students in sports events while schools are otherwise closed would in essence allow the union to implement a partial strike.

In determining whether to discontinue extracurricular activities, the district must also consider the number of activities that would be affected — not just sporting events but also club meetings, sports practices, plays, rehearsals, concerts and open houses. It must consider whether it has regular staffing available to conduct the activities, whether the activities could be conducted with substitute staffing and whether students would be likely to participate anyway given possible sympathies with striking employees.

Finally, the district must consider whether it will be able to provide adequate security at events in order to ensure safety of students and observers. If the event is open to the public, union members cannot be prohibited from entering; however, all protests should be strictly prohibited.

Other District Operations

A variety of other district services may be impacted by a strike, especially if affiliated union workers (e.g., AFL-CIO or SEIU) in other industries are honoring the picket line. In determining whether to keep schools open during the strike, the district must consider its ability to ensure maintenance of essential services (e.g., boiler operation, custodial care) and/or its ability to provide alternatives to these services.

1. ***Transportation***. Usually, transportation issues during a strike pertain to safety. Districts must determine the best way to ensure student safety on buses and at pick-up and drop-off locations. The district should consider relocating pick-up and drop-off locations to a less vulnerable area than at the front of the school. It might also consider adopting a staggered bus schedule to avoid congestion and/or developing alternative routes.

   If the striking union includes bus drivers, however, the question becomes whether or not to eliminate transportation altogether. Districts are not obligated by law to provide transportation for students, except that they must ensure that appropriate transportation services are provided for students with disabilities in accordance with the federal Individuals with Disabilities Education Act and Section 504 of the federal Rehabilitation Act of 1973.

   In determining whether to eliminate transportation services, the district should consider the anticipated length of the strike, the number of students bused, the number of disabled students bused, the potential inconvenience to parents and students, the availability and practicality of alternative transportation (e.g., public buses) and community support for the district during the strike.

   In lieu of providing transportation, the district may choose to reimburse parents for the costs of alternative transportation (Education Code Section 39806). Board authorization should be given prior to the strike either through policy or a resolution.

   As an alternative, the district could consider contracting with a private carrier as authorized by Education Code Section 35330.

2. ***Food services***. If the striking union includes cafeteria workers, advance notice that cafeteria services may be eliminated should be given to parents. However, the district must plan how to meet its legal obligations to provide meals for needy students. Education Code Section 49550 requires the district to provide its needy students with at least one free or reduced-price meal during each school day, and the district may also participate in the federal National School Lunch Program and School Breakfast Program. If the district is without cafeteria services for awhile due to a strike, the district could be challenged about its obligation to provide free or reduced-price meals.

   As an alternative, the board may authorize payment to parents for the meals the board is required by law to provide. It may also contract with a food service management company but only for consulting services; it may not contract out for the management or operation of food service programs (Education Code Section 45103.5). Finally, the district may enter into a contract with a private company to operate a franchise offering fast-food items for sale to students (Education Code Section 45103.5).

3. ***Construction and remodeling***. If construction or remodeling work is being done on school facilities, the district must decide whether the work can or should continue. It should contact its insurance carrier to establish liability in the event of property damage or injury during a strike and to request a written specification of coverage (Ohio School Boards Association, 1996). If the work will continue, the district needs to provide security and/or an alternative entrance in order to protect workers from harassment.

Safety Measures

In determining whether or not to keep schools open during a strike, the board and superintendent must consider whether they can ensure the safety of students and working staff. In addition, they must be prepared to take measures to protect school property from vandalism and unauthorized entry during both day and night.

"A crisis intervention plan is an essential component of an overall safety plan; a planned response can significantly reduce disruption during times of high stress." (California School Boards Association, 1995)

District staff, nonstriking employees, substitutes and students have a right to access school buildings during a strike without restraint by strikers (see "Behavior During Strikes," p. 8). Picketers cannot use violence, threaten violence, trespass, block access to property or otherwise coerce or intimidate others.

In developing strategies to address safety concerns, the district should review any comprehensive districtwide or school site safety plans, evacuation plans and/or board policies and administrative regulations on campus disturbances, campus security, vandalism, relations between the schools and other governmental agencies, district police department roles or other related topics. The district should determine the extent to which existing plans and policies are sufficient to address issues that might arise during the strike or whether additional measures need to be established.

For example, the district should:

1. ***Take steps to prevent strikers from entering school buildings.*** To discourage strikers from entering school buildings, the district should arrange to collect all keys held by employees. Any employee who refuses to surrender keys or duplicates a key without authorization may be disciplined. The district should also be prepared to change the main door locks immediately after the strike begins and to secure all remaining entrances.
2. ***Notify all law enforcement agencies before the strike occurs***. The district should discuss with them the potential problems and specific school security needs anticipated during the strike. Law enforcement officials should monitor picket lines and enforce laws against criminal activity.
3. ***Use additional security personnel***. In addition to the support provided by law enforcement, it may be necessary to place school or private security personnel on school buses, at school entrances and in school buildings.
4. ***Safeguard confidential records and equipment in all installations***. Unfortunately, sometimes school property is damaged and equipment is broken or missing during a strike. Additional security may help, and the district might move critical documents and any equipment that is not immediately needed to another location away from school or district buildings. If vandalism does occur, the district should photograph the damaged property and get statements from observers and witnesses.

5. ***Keep students away from the picket line.*** The district should consider tightening security on the release of students during the day, revising school bus pick-up and drop-off locations to ensure that students stay out of the way of picketers, and suspending operation of student safety patrol. If students choose to participate on the picket line, schools should be prepared for conflicts between students.

6. ***Provide adequate protection for nonstriking employees as they go to and come from school.*** To protect substitute and nonstriking employees and their property, it may be necessary to provide bus transportation from a central location so they do not have to park on campus. Also, employees should be informed that if picket lines obstruct their way, they should tell the picketers that they desire to enter the building and carry out their assigned duties. If picketers use physical contact or threaten physical contact to prevent employees from entering buildings, the employees should not engage in discussions or confrontations with employees nor attempt to force their way through the picket line.

7. ***Instruct nonstriking employees to immediately report all problems or incidents.*** Employees should notify the principal or immediate supervisor if they are blocked from entering school buildings or are in any way harassed. All criminal or illegal activity should also be reported to law enforcement officials.

8. ***Document picket line activity.*** The district should take steps to record or photograph incidents occurring on the picket line and should maintain a log of activities including specific dates, times, places, persons involved, number of pickets and conduct or misconduct on the picket line. Such evidence might be necessary if the district decides to seek an injunction against the strikers or to seek other remedies.

"A communications plan needs to be developed by cool heads in a rational environment." (Berk, 1990)

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9. ***Be prepared to institute emergency evacuations.*** In the event that school buildings need to be evacuated, the district should make sure that the steps taken to secure a building (e.g., chaining doors) do not violate safety codes. Also, the district should review evacuation procedures with staff (including substitutes) and students, and distribute diagrams of the building showing emergency routes and exits.

10. ***Provide for the safety of board members.*** Board members may become targets of harassment, vandalism or intimidation during a bitter strike. The district should institute measures to ensure the safety of board members and the public during board meetings (see p. 46). Additional security may also be needed at board members' homes or places of business.

Communications

The district will have greater success in soliciting public support for its positions if it uses facts, credibility and a well-organized, cohesive communications strategy.

"We made the mistake at the beginning of the strike to remain silent and invisible. We were told [by an outside consultant] not to make any comments or be seen on television. This backfired because, while we wanted to stay out of the way so our negotiators could do the work, the general public thought we didn't care." (Ann Armstrong, board president, San Diego City Unified School District cited in McFadden, 1996 Winter)

Communications Plan

The district may already have a general communications plan in place which addresses activities it wants to accomplish during the year and which may include plans for communications during a crisis. If it does, the board, superintendent and key staff should review the plan, understand their various roles and prepare to implement specific activities. In addition, a plan for communications during a strike should be developed as part of the district's overall strike plan. The communications plan should address both external and internal communications.

It is suggested that the plan include the following elements (California School Boards Association, 1996b):

1. ***Purpose***. This section should describe what the plan is intended to do (e.g., "This plan is intended to provide the community and news media with information about the district's roles, responsibilities and activities in an effort to promote confidence and involvement in education programs").
2. ***Goals and objectives***. The communications plan should identify specific goals which the district aims to achieve (e.g., "to establish and maintain methods of communicating effectively within and outside the district" or "to promote partnerships with community groups to increase awareness of and involvement in district issues") and objectives that will help the district reach its goals (e.g., "to identify key messages and conduct comprehensive awareness, education and information campaigns").
3. ***Target audiences***. The plan should identify target audiences, including individuals or groups at the local, state or national level, who can help the district achieve its goals. The target audience may change for each issue. During a strike, for example, the district may decide that it needs greater support from parents or greater cooperation from city or county officials. Or, it might choose to focus on informing local media about the district's bargaining positions and the reasons for those positions. At the same time, the district should be working on developing ongoing relationships with key individuals, businessess and community groups in order to develop long-term support for the schools.
4. ***Messages***. Key messages that will be reiterated in any communication should be discussed and agreed upon (e.g., the potential cost of the union's proposals to the district over the life of the contract and the district's desire to keep schools operating effectively and safely during the strike). Studies show that audiences generally retain only three main ideas in any form of communication. Therefore, successful communi-

cations campaigns will develop three message points and ensure that everyone involved in district communications will speak with one voice, delivering the same message.

When drafting the messages, the district should consider the community's current attitudes toward the board, the employees and the strike. It should focus on what the district is trying to achieve and determine whether the message is stated in a succinct way that community or other target groups will understand. For example, in explaining the district's financial position, simple pie charts or graphs and easily understandable terms should be used.

The messages will change during the course of negotiations. Before negotiations begin, the district might issue a general news release which indicates that the board will be negotiating with a particular union, the date the contract expires, the number of employees involved and other pertinent background information. This gives the public early notice that the district faces a major undertaking. Then, as negotiations begin, the district might provide an overview of progress made and a general statement on remaining issues. As key issues solidify at the table, the major emphasis should begin to focus on those issues (Michigan Association of School Boards, 1993).

5. ***Strategies***. Specific strategies or activities to achieve the communications goals should be identified. These should be tailored to each target audience, considering the needs and interests of each group and the best medium to use to reach that group. Examples include news releases, fact sheets, letters, meetings, news conferences, newsletters, telephone calls, editorial board meetings, bulletin boards, pro-district advertisements by "concerned citizen groups," etc. Timelines, persons responsible and cost implications should also be included in the communications plan.

   The district must remember that students, parents and the community will be anxious for information and updates during the strike. It may be necessary to install and reserve telephones to handle public inquiries and to make daily announcements about whether or not schools will be open the following day. The state PTA has encouraged local PTAs to assume a position of neutrality during strikes (California PTA, 1995), but they may provide a useful means of presenting factual information about school operations and safety issues.

6. ***Spokesperson/media contact***. To coordinate communications efforts and ensure the district is well represented, the district should establish a clear plan for routing requests for speakers and a policy identifying who has the authority to speak on behalf of the district.

   In responding to requests, it is recommended that a primary district contact be identified. It is especially important that someone be assigned as the primary district contact for all media inquiries.

   In addition, a process should be established by which spokesperson(s) will be identified on a case-by-case basis or issue-by-issue basis taking into account the audience and the depth of topic/technical expertise needed. All board members must be able to respond to the media when they receive direct calls or upon request of the district's primary media contact.

Communications Approach

The district's credibility depends on its ability to provide accurate information to the public. For this reason, the board should be skeptical if the union seeks agreement on a negotiations ground rule requiring a "news blackout." A blackout decreases the potential for community support for the district's positions and further ensures that the only information the union membership will receive is from the union (Michigan Association of School Boards, 1993).

"Building the public trust requires open and accurate communications. The board that ignores the power of public persuasion in the negotiations process may do so to its own detriment." (Michigan Association of School Boards, 1993)

The district's general approach to communications — during a strike or any other time — should be factual and honest. The primary district contact and/or designated spokesperson should state the key issues in dispute and describe the operational, educational and economic implications of the proposals so the community can fully understand the importance of each issue.

The district may also express concern about the impact of the strike or regret about strategies used by the union. However, the district should avoid confrontational and personal attacks. Criticisms of the quality of teaching or of teachers' "short" work schedules hurt the entire school system and make it harder to rebuild the public's confidence in the schools after the strike.

The district should also avoid any kinds of statements that might hurt its negotiations (e.g., "We would like to pay them more but we just can't afford it").

If the primary district contact and/or designated spokesperson have worked with others in developing the key messages to present on behalf of the district, no one should be surprised by what they have to say. Neither the board, superintendent, negotiator nor strike coordination team should be caught off guard by district statements they hear or see through the media.

Internal Communications

It is crucial that the superintendent, strike coordination team, board members, negotiator, communications coordinator, legal counsel, principals and other nonstriking staff communicate with each other frequently and effectively. Information must be shared about district operations, picket line activity, the status of negotiations and emerging concerns.

Unfortunately, some districts have experienced interference in their internal communications systems during strikes. Interfering with communications is a common union tactic for trying to disrupt or shut down district operations. For example, the union may attempt to jam the telephone lines of the district in order to create confusion and frustration by the public and make it difficult for district staff to communicate with each other.

It is recommended that the district establish a single "command center" and a communications coordinator to control the flow of information within the district. Careful thought should be given to the logistics of the internal communications system to avoid tampering while still allowing communications to continue with ease. A separate communications room might be set up, with extra telephones installed before the strike. At least one telephone should have an unlisted number for use only by board members, managers or other key members of the district's strike team or for emergencies.

The district might also consider using alternative communications systems, such as walkie-talkies, citizen band radios, messengers or other means of communication. It might establish daily briefing sessions before and after school. Finally, to ensure confidentiality of district discussions, the district might find it necessary to use a code name or password for all internal communications.

Although some of these strategies may seem extreme, districts that have experienced a strike can attest to the serious need for everyone in the district to be kept informed about strike issues, and the problems that can result when such communications are made difficult or impossible.

Effective Crisis Communications

Undoubtedly, bad news spreads faster and receives more media attention than good news. When a crisis such as a strike occurs, the school board, individual trustees and the superintendent can cope with the questions and concerns best if they:

- **Stay calm**. The image portrayed during a crisis directly affects the morale of the district. It is imperative to maintain control and express continued concern.
- **Centralize the dissemination of information**. All media and public inquiries should flow through a primary district contact. This person will either provide the requested information or refer the inquiry to the appropriate spokesperson.
- **Get the facts**. During a strike, rumors run rampant. Get the facts from those in the school district who are most knowledgeable about the situation. Those persons must provide accurate and complete information so that the district can be responsible and responsive.
- **Prepare a short, factual statement to the media**. The decision to issue a verbal or written statement to the media depends on the seriousness of the situation, context of the situation, amount of time to adequately prepare the statement, the district's current image in the community and the significance of what the district wants to share. In a crisis situation, a written statement that can stand as the official position should be prepared expeditiously, provided to reporters on request and distributed during any news conference or briefing.
- **Ride out the storm**. When a crisis hits, media that were supportive of the district in the past may suddenly appear adversarial. Many districts find that once all the facts are provided, reporters are generally willing to write stories that set the record straight and may be interested in doing follow-up stories after the crisis is over.

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Board Meetings

The board should proceed with its regularly scheduled board meetings during the strike. Extra efforts may be needed to maintain order during the meetings and keep the union from using the meetings to seek support for its positions. The board should follow normal meeting procedures and try to keep the meeting as short as possible.

"If the board's supporters include some visible and influential members of the community, then invite them to attend the meeting and voice their views. The board meeting will be a political exercise and surely a media event. It is important not to let the board's meeting become the union's meeting." (Ohio School Boards Association, 1996, p. 17)

To reduce the opportunity for union members to discuss strike issues in public, the topic of the strike should be avoided as much as possible during board meetings. If related items are on the agenda, Education Code Section 35145.5 and Government Code Section 54954.3 requires that the public be allowed to address the board regarding those items. Certain issues should have been dealt with prior to the strike anyway — such as board resolutions to contract for additional services, set substitute pay and so on. Also, meetings with the district's negotiator about district positions and meetings with union representatives should be held in closed session (Government Code Section 3549.1).

The board is required to set aside time on the agenda to allow members of the public to discuss any issues they choose (Education Code Section 35145.5 and Government Code Section 54954.3). The board cannot take action on those issues during that board meeting, and cannot stop individuals from raising issues related to the strike. The board has several options (authorized by Government Code Sections 54954.3 and 54957.9) to maintain control:

1. The board may adopt bylaws limiting the amount of time individual speakers will be allowed to speak (e.g., three minutes).
2. The board may limit the total time for public input on particular issues (e.g., 30 minutes).
3. The board may remove disruptive individuals and order the room cleared if necessary.

At the start of the meeting, the board president should explain these ground rules. The audience should be notified that speakers will be asked to wrap up their thoughts if they exceed the allotted time, that everyone should remain seated throughout the meeting and that persistent disruption may be cause for terminating the privilege of addressing the board, for removal from the meeting or for ending the meeting.

Other strategies for conducting orderly board meetings during a strike include the following (Pennsylvania School Boards Association, 1996):

- Hold adversarial board meetings in a large room, such as a gymnasium or auditorium, with an adequate public address system (e.g., one microphone at podium for public members who will be speaking, microphones for board members and superintendent, speakers mounted outside so overflow crowd can hear, a cut-off switch accessible to a designated timekeeper) and enough seats available so the audience does not stand.

- Arrange for an adequate number of uniformed security professionals to be present during the meeting.
- Open the meeting room to the public one-half hour before the meeting begins.
- Have a sign-up sheet available for members of the public who wish to address the board, indicating that speakers will be called in the order in which they sign up.
- Have a planned exit route in the event the meeting is disrupted.
- Require that all members of the audience be seated during the meeting and that any overflow stand outside the building where the public address system will allow them to hear the meeting; cite applicable city and fire regulations.

Legal Strategies

At what point should the district initiate various legal channels to end the strike? It is possible, under certain conditions, to appeal to PERB for an injunction to stop the strike. It is also possible to seek an injunction to limit the number or location of picketers or to enjoin violence. Such actions are not always successful. For example, PERB has refused injunctive relief when the district failed to prove a total breakdown in the educational process and the unavailability of alternative relief. (Fremont Unified School District (1990) PERB No. IR-54, 14 PERC 21107). Still, the district should be aware of the conditions under which injunctive relief may be possible. It also may want to consider legal action in order to build a foundation for seeking damages following the strike (see "Seeking Damages," p. 51).

This is an extremely complex area of law, and courts generally are cautious about exercising injunctive power during a labor dispute. Legal activities such as peaceful picketing and leafleting may not be enjoined. If the district decides to seek injunctive relief, it must be prepared to show that an underlying unfair practice is being committed by the union and that irreparable damage will occur in the absence of court intervention (California Public Sector Labor Relations, 1989; California School Boards Association, 1996a). Also, surprise strikes and intermittent strikes have been held by PERB to be unlawful pressure tactics which justify injunctive relief when there is reasonable cause.

To request an injunction, the district must file a request with PERB along with declarations from witnesses which support the request. An investigation is conducted within 24 hours after the request is received in cases where a strike is pending or within 120 hours in other cases. PERB then decides whether to seek the injunction (PERB Rule 32450 et seq.). If a strike injunction that PERB has obtained is violated, PERB may decide whether to initiate court contempt proceedings.

Another potential legal avenue available in responding to a strike is the filing of unfair labor practice charges (see "Unfair Practices," p. 9). Unions often use this strategy against districts, but unions are equally prohibited from engaging in unfair practices. If the union is found to be engaging in unfair practices, the result is usually an order to cease and desist the practices, remedy the violation and post a notice of PERB's findings. Other results might include an increase in community support for the district and a positive impact on negotiations.

If the district is going to use either of these legal strategies, it must gather strong evidence of wrongdoing by the union. The district should monitor strikers and their activities, document events, take photographs to record incidents and immediately report any illegal activity to law enforcement. It should also maintain an anecdotal record of strike incidents, discussions and resolution of issues for future reference in the event that subsequent litigation may occur.

"Keep your eye on your real goal and remember that the strike will eventually end, but schools must keep going. Seek to make the long-term impact of the strike as favorable as possible." (Booth, 1993, p. 69)

Continued Negotiations

Of course, even while a strike is under way, the district and union may continue negotiations in order to come to agreement about contract terms. The district's negotiations team and the board must determine whether negotiations will continue during a strike.

"You have to have some core beliefs that you will hold on to." (Joan Pierce, board member, Mt. Diablo Unified School District, cited in McFadden, 1996 Winter)

When the pressure of the strike mounts, it is more difficult than ever for the board to stick with its positions. Still, the board has an obligation to ensure that the final product — the contract — does not hurt the district's fiscal health or its ability to provide the best educational program possible for students. It must maintain control of the process and the outcomes.

The strategies used by the board to engage in effective negotiations before the strike still apply during the strike: The board must understand its appropriate role in collective bargaining, must support its negotiations team and must remain firm in its "bottom-line" positions while seeking to reach agreement (see "Effective Negotiations," p. 11).

As the board and its negotiations team reach the final stages of strike settlement, they must be careful to not grasp at quick-fix solutions in order to escape the pressure of the strike. They also should think in terms of "face-saving" clauses for employees in a settlement.

5. Rebuilding After a Strike

The strike does not really end when the district and union come to agreement about contract terms. It ends when employees are back doing their jobs and when district operations, employer-employee relations and community confidence are back on track.

This final stage of rebuilding is too often ignored. Yet, it is critical to get past the hurt feelings and the disruption to the educational program as soon as possible in order to focus on what really matters — the education of the community's children. Therefore, when the district is preparing its strike plan, or during the strike itself, the district should begin thinking about what steps it will take when the strike is over.

In so doing, the board and superintendent should be familiar with laws pertaining to discipline, reinstatement and treatment of strikers. The district should consult its legal counsel if it intends to implement any consequences for employees who were on strike. It should also consult its legal counsel if it intends to seek damages in order to reimburse the district for certain strike-related costs.

The focus of post-strike activity, however, should be on resuming normal operations and rebuilding relations with employees, parents, students and the community. If ill feelings are allowed to fester, the district will face problems that go far beyond its ability to conduct positive negotiations the next time. The educational program itself could be hurt. After all, the school staff works closest with the students, and community support is essential to seeking volunteer assistance, local financial support, positive media relations and participation in district and school governance.

Finally, when the strike is over, the board and district staff should "debrief" to review how well the district's strike plan worked. Now is the time to make revisions in the plan if some things did not work.

Consequences for Strikers

Disciplining Employees

The district may discipline employees for engaging in an *unprotected* work stoppage or for engaging in unprotected behavior during an otherwise legal strike, but not for participating in protected activity (see "Legality of Strikes and Certain Conduct," p. 5). Under the EERA (Government Code Sections 3543.5-3543.6) and federal law, neither school boards nor employee organizations may engage in "unfair practices" (see p. 9) which include reprisals, discrimination, restraint or coercion against employees for the exercise of their rights. Penalties for unfair practices may include orders to cease and desist from the unlawful actions, remedy the violation and post a notice of PERB's findings and orders related to the matter. Therefore, given the uncertainty of the law regarding the legality of public employee strikes and strike conduct, the district would be safest not to threaten discipline or termination or to institute any discipline, even for conduct it assumes is unprotected, until it consults legal counsel.

When an employee has participated in an unprotected work stoppage, or has engaged in illegal behavior during the strike, discipline options open to the district include dismissal, suspension from employment, revocation or suspension of credential, involuntary transfers and letters of warning:

1. ***Dismissal***. There has been no clarification regarding the reinstatement rights of employees since case law found that public employee strikes are not necessarily illegal. An earlier Supreme Court case (International Brotherhood of Electrical Workers vs. City of Gridley), however, found that even in the case of an illegal strike, strikers must be accorded due process of law before being terminated. The district would need to carefully follow statutory procedures and determine that the conduct also constitutes grounds specified in Education Code Section 44932. Three possible grounds, depending on the circumstances, include "evident unfitness for service," "persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state Board of Education or by the governing board of the school district employing him/her" or "immoral or unprofessional conduct" (Association of California School Administrators, 1995). Because dismissal procedures are long and costly, however, it is rare that a district will use termination as a remedy for unprotected strike-related activity.
2. ***Suspension from employment***. The board may suspend classified employees for valid disciplinary reasons (Education Code Section 45304). In the case of certificated employees, Government Code Section 3543.2(b) says the district may negotiate the right to suspend employees. However, a PERB case found that a standard management rights clause which reserves the right to suspend to the district is sufficient under the EERA (Hughes-Elizabeth Lakes Union School District (1989), 13 PERC 20114).
3. ***Revocation or suspension of credentials***. County boards may revoke or suspend the county certificate of a teacher for certain specified causes after notice and hearing (Education Code Section 44427 et seq.). Otherwise, the district must go to the Commission for Teacher Credentialing.

"[L]ittle is written about and too little effort is expended on the process of school district image rebuilding. If conducted correctly and with the same energy as the process of strike management, rebuilding can prevent future strikes and can unify the entire community in search of quality education." (Association of California School Administrators, 1995)

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4. ***Involuntary transfer***. Unless otherwise provided in the collective bargaining agreement or past practice, the district has a right to make reasonable reassignments and transfers when the superintendent concludes that such transfers are in the best interest of the district (Education Code Section 35035). However, care must be taken to avoid even the appearance of an attempt to interfere with or restrain the employee's right to organize or engage in other activity protected by the EERA.
5. ***Written warnings in personnel files***. PERB has found written notices in personnel files to be legal as long as the activity was unprotected by law and the notices are used to maintain employee discipline. However,

the district cannot place letters of reprimand in personnel files for failure to perform voluntary extra duties, nor can it place letters of commendation in nonstrikers' personnel files.

Even though the board has a right to discipline employees for specific behaviors using these methods, the board needs to consider the impact of such discipline on its overall efforts to rebuild relations in the district and resume normal operations. Clearly, extreme behaviors or criminal actions cannot be tolerated. The board is justified in taking action against individuals who have threatened or committed violence during the strike or who have vandalized school property. For lesser offenses, however, the board must weigh the benefits of discipline against the harm that could be done to the district's image and its ability to heal. For example, disciplining all employees who participated in the unprotected strike might only serve to build community sympathy for the strikers.

Seeking Damages

A district may not bring a civil tort action to recover damages caused by an illegal strike. Districts seeking strike damages are required to pursue their claims through PERB (El Rancho Unified School District vs. National Education Association (1983), 33 Cal. 3d 946 192 Cal Rptr 123). In previous cases, PERB has denied districts' claims for reimbursement for substitute teacher training and a telephone tree to notify school principals in the event of a surprise strike (Westminster School District (1982), PERB No. 277, 7 PERC 14034), and for the services of administrators who performed duties boycotted by teachers (El Dorado Union High School District (1985), PERB No. 537, 10 PERC 17006). Furthermore, in a case in which the district had not sought an injunction to halt the strike or filed any unfair labor practice charges, PERB denied reimbursement of all costs incurred during the strike, such as lost revenue for decreased attendance, federal Title I monies, costs of hiring security guards, substitutes, reproduction of materials, and other expenses (Fresno Unified School District (1982), PERB No. 208, 6 PERC 13110).

A district does retain the right to sue for breach of contract if it has an explicit no-strike clause, or for tortious acts occurring during a strike (e.g., strike conduct marked by violence) (California Public Sector Labor Relations, 1989).

Resuming District Operations

During a strike, the district will have done its best to continue the basic operations of the schools, but may have put other functions on hold, such as policy or curriculum development, program review or vision setting. The first priority of the district following the strike is to reestablish normal operations and get back to business as usual.

Extra efforts may be needed to make up any lost time by employees and students. Depending on the length of the strike, employees who were on strike may need to review their students' activities and progress and design new lesson plans. Extracurricular activities and athletic events may have been halted during the strike and need to be rescheduled. Any students who were absent may need tutorial assistance, after-school study sessions or homework hot lines to help them catch up. The district's business office may have to deal with renewing district contributions to employee benefits.

The board and superintendent must ensure that time and resources are devoted to making a smooth transition back into normal operations.

Rebuilding Relations with Staff and Community

The ill feelings generated during a strike cause deep wounds that may be slow to heal. The damage is not just to the relationship between the board and union, but is felt among staff members who may find themselves on opposite sides of the issue and/or suffering the effects of eroding community support for schools and individual board members.

"The resentment has dissipated greatly over the years. . . . [After switching to a nonadversarial approach to bargaining,] we all began to work extremely well together. . . . We all trust each other and we work as a team. That is the difference in our district." (Juanita Haugen, board member, Pleasanton Unified School District, cited in McFadden, 1996 Winter)

Employer-Employee Relations

The district should accept responsibility for informing staff and all administrators of the provisions of the new contract (rather than leaving it up to the union to communicate contract terms) and may use this opportunity to gain the commitment of employees to the positive implementation of the contract. District representatives also may meet with employees to impress upon them the need for all parties to set aside the strike experience and focus on the education of children. An outside facilitator might be helpful to reduce any lingering ill feelings and to bring all parties back together again in a harmonious relationship.

"No matter how long, or how bitter, strikes eventually come to an end. It is then [that] foolish things — done by either party during the course of the strike that occurred — impede the resumption of normal activities." (Pennsylvania School Boards Association, 1996)

Reconciliation really begins at the school site level, however. To build teamwork after the strike, principals should handle the "welcome back" (Berk, 1990). The superintendent should first ensure that school administrators understand and will support the district's positions and the final employee contract, and that they are prepared to address comments and concerns by employees.

In the aftermath of difficult negotiations and related activities, the district should consider proposing a different model for negotiations to avoid similar problems in the future. Collaborative models of negotiations are used in many districts and might be welcome in a district where a set of bitter negotiations sessions or a strike has just taken place.

In addition, the district should consider ways to improve year-round communications with employees. Employees need to feel that there is a process in place that allows them to share ideas, suggestions and concerns other than during formal negotiations sessions. A plan is needed to work toward positive employer-employee relations by preventing conflict and lessening grievances.

Community Relations

After a strike, parents and the public will need to be reassured that operations are back to normal, that educators have resumed their roles and that everyone in the district is focusing on providing a high-quality educational program. Pettiness or hostility between the board and employees is destructive and may only serve to heighten the community's frustration and dissatisfaction with the entire school system.

The district should publicize the facts of the strike settlement and keep the public informed about the resumption of school schedules, staffing and other operations. A continuing communications program is essential.

Additional suggestions for rebuilding community relations following a strike include:

- starting community involvement projects which establish the district's contributions to the welfare of the community;
- developing a planned, visible, annual project showing that teachers and administrators are interested in the entire community;
- forming a communitywide committee to assess and plan toward a renewed goal of quality education;
- establishing a publication for the entire community which reports on positive educational happenings, with emphasis on teacher-administrator partnerships toward educational improvement; and
- beginning a public awareness effort for understanding the financial condition of the district, emphasizing the quality of the district's money management as well as the reality of the costs and needs of providing quality education (Association of California School Administrators, 1995).

Assessing the Strike Experience

"Boards are ultimately accountable for the operations of the school district. The board has an important role . . . in evaluating the results [of the collective bargaining process] and planning for any necessary modifications in the future." (California School Boards Association, 1996a)

Following the strike, the district should perform a critique of the entire experience, considering:

1. What events and conditions led to the strike? Could it have been avoided?
2. Did the district have a solid strike plan in place in time to make all the necessary preparations? Were all critical operational issues included in the plan?
3. What worked well? What did not? What could be done better?
4. What impact did the strike have on students? Does the district have a plan in place to mitigate any negative effects?
5. What impact did the strike have on parents, community members, media and nonstriking employees? Does the district have a plan in place to mitigate any negative effects?
6. Was the board unified and firm in its critical positions during the strike?
7. What contract issues were left unresolved which might pose a problem in future negotiations?
8. Should the district use a different model of negotiations in the future?
9. What can the district do to prevent future work stoppages?

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Appendix A. Glossary

Arbitration: A method of settling disputes by submitting them to an impartial third party for decision. Two major types of arbitration in labor relations are:

1) **Grievance arbitration** - used to resolve grievances related to contract interpretation;
2) **Interest arbitration** - used to determine actual contract language.

Grievance arbitration is not required by law but may be required by collective bargaining contract provisions. Interest arbitration is not provided for under the EERA.

Advisory arbitration: Arbitration in which the decision of an arbitrator is not binding on the parties.

Bargaining unit: Group of employees recognized by the employer or certificated by an authorized agency as appropriate for representation by a labor organization for purposes of collective negotiations. Also called negotiating unit.

Binding arbitration: Arbitration in which the decision of an arbitrator is binding on the parties.

Caucus: When the parties call "time out" during negotiations and discuss strategy and/or the issues under consideration for purposes of collective negotiations.

Certificated service: All employees required by law to possess credentials issued by the department of education and the positions which are limited to those who possess such credentials.

Certification: Recognition of the labor organization based on the mandatory procedure for determining the exclusive representative of an appropriate unit.

Classified service: Every position not defined by the Education Code as a position requiring certification qualifications and not specifically exempted from the classified service.

Cost-of-living adjustment: An adjustment to wages that is granted to all employees in a unit. Collective bargaining contracts often contain "escalator" clauses that require wage or salary adjustments at stated intervals in a ratio linked to changes in the Consumer Price Index.

Collective bargaining: When a public employer and the exclusive representative of its employees meet at reasonable times, negotiate in good faith with respect to the terms of an agreement and execute a written contract incorporating any agreement reached.

Community of interest: A factor to be considered in determining whether employees should be grouped together as an appropriate bargaining unit.

Confidential employee: One who assists and acts in a confidential capacity to a person who formulates and affects management policies in the area of collective bargaining.

Contract: A written agreement that is legally enforceable.

Consumer Price Index: The Federal Bureau of Labor Statistics' measurement of inflation related to the cost of goods and services.

Decertification: Withdrawal of labor organization's official recognition as exclusive negotiating representative.

Due process: All public employees have the right of due process under the federal constitution. This concept has been interpreted in discipline situations to involve certain standards that must be met before discipline can be imposed.

Dues check-off: An agreement by the employer to deduct the organization dues and transmit them to the union.

Educational Employment Relations Act: California's collective bargaining law covering employees of K-12 public schools (Government Code Section 3540 et seq.); also known as the Rodda Act.

Exclusive negotiating rights: The right and obligation of an employee organization designated as majority representative to negotiate for all employees, including nonmembers, in the bargaining unit.

Exclusive representative: The employee organization that has won the sole right to represent employees in a bargaining unit and to negotiate an agreement for the unit. The exclusive represents all employees in the unit in grievances and negotiations, including non-members of the organization.

Fair share agreement: An agreement between the public employer and the bargaining agent whereby employees in a bargaining unit who are not members of the labor organization are required to make an in-lieu-of-dues payment to the labor organization.

Factfinding: Impasse procedure whereby a tripartite panel considers several specifically enumerated facts and makes findings of fact and recommendations on the terms of settlement to a negotiated agreement. Such recommendations are advisory.

Federal Mediation and Conciliation Service: Federal mediation agency which provides mediators to assist parties involved in negotiations, or in a labor dispute, in reaching a settlement; provides lists of suitable arbitrators on request; and engages in various types of "preventive mediation."

Fringe benefits: Benefits which may be provided to employees in addition to salary, including health insurance, paid holidays, paid vacation and early retirement.

Good faith: The willingness of the parties to meet and discuss bargaining issues while making, in total, a reasonable effort to reach an agreement. It does not imply that either party must concede, compromise or agree to any particular proposal.

Grievance: An alleged violation, misinterpretation or misapplication of any provision of the collective bargaining agreement.

Grievance procedure: A formal plan set forth in the collective bargaining agreement which provides for the resolution of grievances through discussions at progressively higher levels of authority in management and the employee organization.

Impasse: The point at which one or both parties determine further discussion on an issue would be unproductive.

Industrial model of negotiations: A negotiations approach in which formal proposals are exchanged by each party's spokesperson.

Injunction: A court order restraining one or more persons or unions from performing some act which the court believes would result in irreparable injury to property or other rights.

Interest-based negotiations: A negotiations approach based on identifying each party's interests and finding mutually satisfying options.

Intermittent strike: Employees go on strike, return to work for awhile and then go back on strike.

Last, best offer: An employer's final offer made to an employee organization during the collective bargaining process.

Management employee: Any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions are designated by the public school employer subject to review by the Public Employment Relations Board.

Management prerogatives: The rights reserved to management which may be expressly noted as such in a collective agreement.

Mediation: A confidential process through which an impartial third party tries to help two parties resolve disputes.

Memorandum of understanding: A written agreement between the representative of a public agency and a public employee organization setting forth terms and conditions of employment.

Neutral: A disinterested third party who intervenes into negotiation or contract disputes in order to facilitate settlement.

No-strike clause: A provision in a collective bargaining agreement in which the employee organization agrees not to strike.

Partial strike: Employees attend to some but not all of their required duties (e.g., show up for some classes but not others, or miss back-to-school night or similar activities).

Past practices: Existing practices sanctioned by use and acceptance that are not specifically included in the collective bargaining agreement, except, perhaps, by reference to their continuance.

Picketing: The patrolling near the place of employment by members of an employee organization to publicize their dispute.

Pressure tactic: Any of a variety of strategies or activities designed to provide political and psychological pressure on the district, intimidate district staff or the board, or otherwise disrupt district operations in an attempt to force the district to give into the union's negotiations positions.

Prevailing rate: Wage rates that are paid to most workers engaged in the same or similar occupations within a geographic or labor market area.

Proposal: Suggested contract language given verbally or in writing by a party during negotiations of a particular issue or subject.

Protected activity: Work stoppages, strike behavior or other activities which are protected (i.e., lawful) under the Educational Employment Relations Act.

Public Employment Relations Board: the five-member board appointed by the governor and confirmed by the state Senate to administer the Educational Employment Relations Act.

Ratification: The formal approval of a newly negotiated agreement by vote either of the organization members or the school board.

Recognition: Employer acceptance of an organization as authorized to negotiate for all of the members of a negotiating unit.

Recognized organization: An employee organization which has been recognized by an employer as the exclusive representative in an appropriate bargaining unit.

Reduction in force: Any reduction in the work force. Commonly used as a synonym for the layoff of employees, usually due to a lack of funds for various programs or services.

Reopening clause: A provision in a collective bargaining agreement stating the time or the circumstances under which negotiations may be reopened prior to the expiration of the contract and which provisions of the agreement are subject to negotiations.

Representation elections: A process by which employees cast votes for a particular labor organization to become their exclusive representative or vote for "no representation."

Rodda Act: California's collective bargaining law covering employees of K-12 public schools (Government Code Section 3540 et seq.); also known as the Educational Employment Relations Act.

Rolling strike: Employees strike different sites on different days in order to confuse the employer.

Scope of negotiations: The issues concerning personnel policies and practices and other matters affecting working conditions about which an agency and a labor organization may negotiate an agreement.

Seniority: Term used to designate an employees status relative to other employees for purposes such as order of promotion, layoff, vacation, etc.

Sick-out: An organized effort by an employee organization in which employees call in sick on the same day(s) and therefore are unavailable for work.

Sit-in or Sit-down strike: Stoppage of work where the strikers remain in occupancy of the employer's premises.

Slowdown: Performing work at a minimum level, usually just prior to a strike.

State Mediation and Conciliation Service: State agency which provides mediators to assist parties involved in negotiations, or in a labor dispute, in reaching a settlement; provides lists of suitable arbitrators on request; and engages in various types of "preventive mediation."

Strike: The withholding of services by employees as a group to pressure an employer to grant certain bargaining demands.

Strike command center: A central location for operating the district's strike-related activities.

Strike coordination team: A committee established by the school district to coordinate implementation of the district's strike plan, serve as the point of origin for all internal and external communications regarding the strike and provide recommendations to the board and superintendent as the strike progresses.

Strike plan: A written plan addressing a broad range of issues that the district would face in the event of a strike, including but not necessarily limited to roles and responsibilities of the board and district staff, the feasibility of keeping schools open, staffing, the educational and extracurricular program, safety measures, communications, board meetings and legal strategies.

Surprise strike: The employee organization calls a strike with little or no advanced notice to the employer.

Subcontracting: Performance of bargaining unit work by nonbargaining unit individuals or groups.

Sunshine: The act of providing public notice of collective bargaining proposals as required by the EERA.

Supervisory employee: Any employee having the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Sympathy strike: Employees belonging to one union honor the strike of another union by refusing to cross the picket line.

Tentative agreement: Agreement upon one or more items by the negotiators but subject to approval by the entire employee group and/or entire school board.

Unfair labor practice: A violation of the collective bargaining law such as those related to ones duties to bargain.

Unprotected activity: Work stoppages, strike behavior or other conduct which is not protected (i.e., unlawful) under the Educational Employment Relations Act.

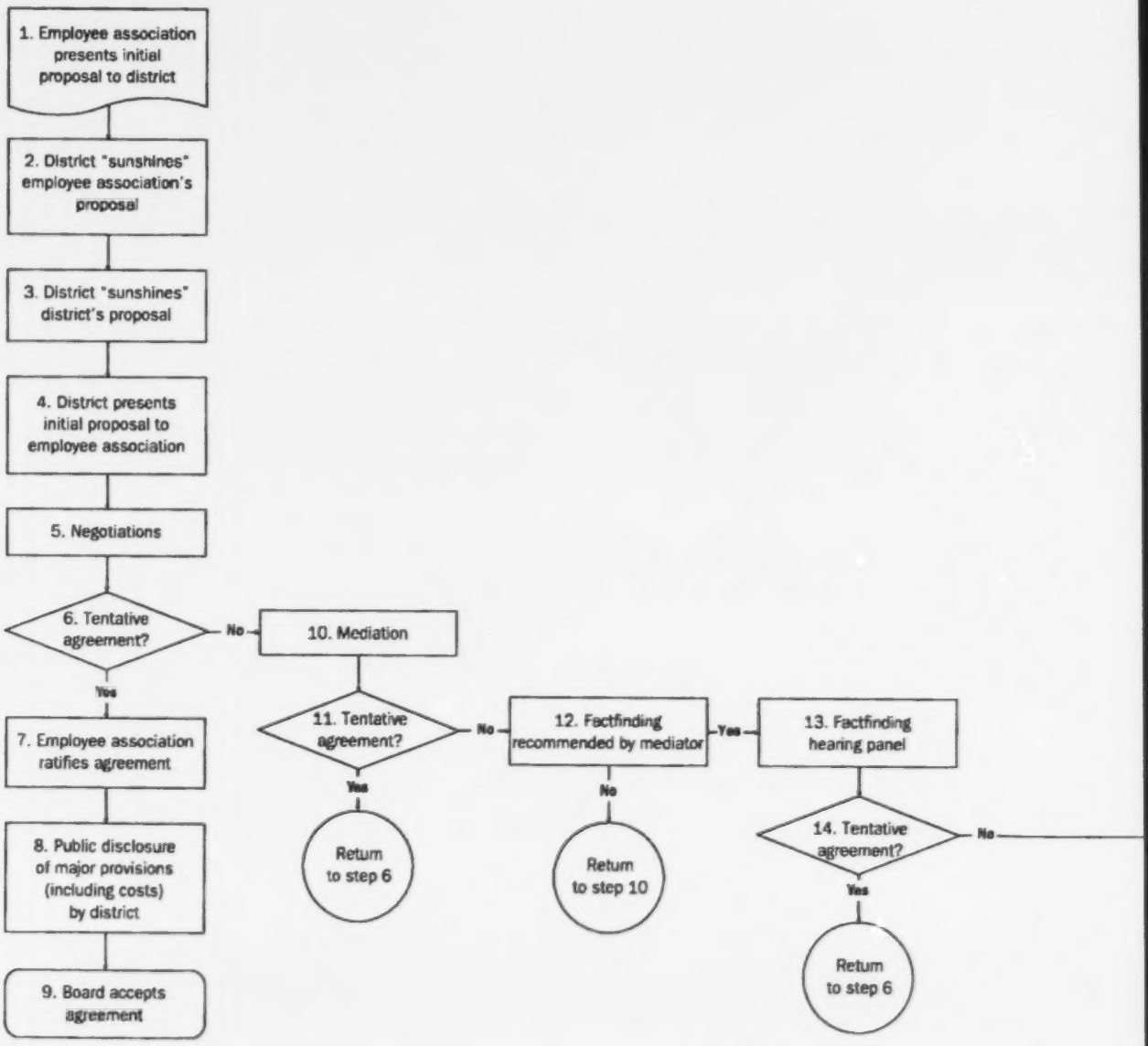
Wildcat strike: A minority of employees strike without authorization by the exclusive bargaining agent representing those employees.

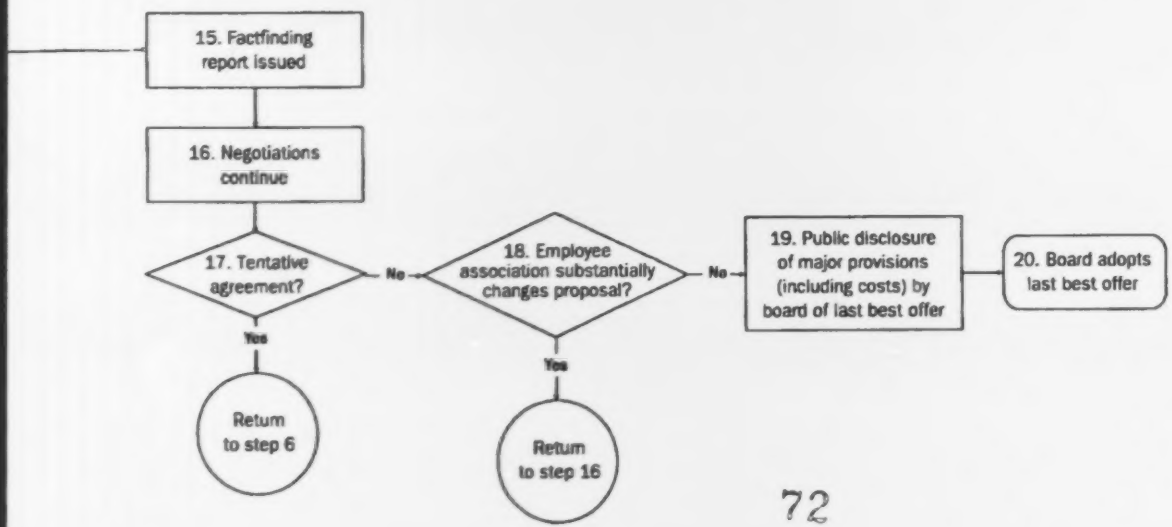
Work stoppage: Organized effort by an employee organization which results in the failure of employees to perform required and expected duties; includes strikes, sick-outs, sit-ins, slow-downs and similar activity

Work-to-rule campaign: Employees slow down work by very deliberately following every rule, policy or procedure of the employer and do nothing more than is literally required by their formal obligations as employees.

Zipper clause: A contract provision specifically barring any attempt to reopen negotiations during the term of the agreement (See reopening clause).

Appendix B. Collective Bargaining Flowchart




15. Factfinding report issued
16. Negotiations continue
17. Tentative agreement?
No
18. Employee association substantially changes proposal?
No
19. Public disclosure of major provisions (including costs) by board of last best offer
20. Board adopts last best offer
Yes
Return to step 6
Yes
Return to step 16

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Flowchart Narrative

Note: *The following explanatory notes provide a brief explanation of the collective bargaining process as diagrammed in the Collective Bargaining Flowchart. It is not intended to be a legal review of the code sections referenced, nor of the Public Employment Relations Board and court decisions surrounding the Educational Employment Relations Act.*

Step 1: The collective bargaining process is governed by Educational Employment Relations Act, Government Code 3540 et. seq. Negotiations usually begin when the employee organization (exclusive representative) submits its initial proposal to the employer, although the district may also initiate negotiations.

Step 2: Government Code 3547 requires that all initial proposals of an exclusive representative and school district be presented at a public meeting of the school district, and that a public hearing be held on the proposals at subsequent public meetings. This process is called "sunshining." When a board sunshines a proposal, it provides an opportunity for the public to be aware of and comment on the subject matter and proposals being negotiated by the district and employee organization. After presentation of initial proposals, the board has an ongoing duty to sunshine within 24 hours any new subjects of meeting and negotiating and any vote, by roll call, taken on such subjects.

Step 3: Typically, the district sunshines its proposal after the employee organization's proposal is sunshined. Providing public notice of the availability of proposals and holding public hearings can take from one to two months to complete. California Code of Regulations, Title 8, Section 32900, mandates that every school district adopt a board policy implementing these public notice requirements.

Step 4: After sunshining its initial proposal, the board adopts its initial proposal and presents it to the employee association.

Step 5: After sunshining all proposals, negotiations can begin. Government Code 3543.7 states that the duty to bargain in good faith requires that negotiations begin in time to reach agreement or resolve an impasse prior to the adoption of the district budget. The EERA specifies the scope of what must be bargained (Government Code 3543.2) and imposes duties upon both parties related to appropriate conduct (Government Code 3543.5 and 3543.6). Either party may file an unfair labor practice charge against the other party alleging a violation of the EERA (Title 8, Section 32615).

Step 6: If the parties' bargaining teams reach tentative agreement, the process concludes with acceptance of the agreement by both parties. If the district and employee organization are unable to reach agreement, one or both parties may declare impasse (Government Code 3548).

Step 7: Typically, following tentative agreement, the employee organization membership ratifies the contract first.

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Step 8: Government Code 3547.5 requires that before the board enters into a written agreement with an exclusive representative, the major provisions of the agreement including, but not limited to, the costs that will be incurred in the current and subsequent fiscal years, be disclosed at a public meeting. Government Code 3540.2 specifies that districts whose budgets are certified as qualified or negative must allow the county office of education at least six working days to review and comment on any proposed agreement. In addition, districts whose budgets are disapproved by the county superintendent are subject to review and control by the county superintendent as set forth in the Education Code 42127 et. seq.

Step 9: Meeting and negotiating as defined by Government Code 3540.1 concludes with "the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties..." Education Code 42142 requires the superintendent to forward any budget revisions necessary to fulfill the terms of the agreement within 45 days of the adoption of the agreement.

Step 10: The statutory impasse procedures begin with mediation (Government Code 3548 and 3548.8). The mediation process consists of the appointment of a professional mediator (also known as a conciliator). These individuals are usually employees of the State Mediation and Conciliation Service, Department of Industrial Relations, although the parties may select another person if they pay the costs. The mediator has no authority other than the power of persuasion and the fact that the parties must participate in the mediation process "in good faith" or risk being charged with an unfair practice by the other side.

Step 11: If mediation produces an agreement, the process of accepting the contract takes place (steps 7 through 9). If mediation does not produce an agreement, the mediator may require that the parties continue negotiations or may declare factfinding to be appropriate to the resolution of the impasse.

Step 12: If the mediator does not declare factfinding to be appropriate, the mediator retains jurisdiction and may call for additional mediation. If the mediator declares factfinding to be appropriate, either party may request factfinding take place by notifying the other party in writing (Government Code 3548.1).

Step 13: The factfinding hearing is conducted by a three-member factfinding panel. Within five days after receipt of a request to proceed with factfinding, each party selects one member of the panel. Within five days of the selection of panel members, Public Employment Relations Board selects a chairperson (someone from a PERB-supplied list containing seven names from which the parties alternately strike off a name to arrive at the chairperson). Within five days after PERB selection of a chairperson, the parties may agree on a chairperson other than the person appointed by PERB (Government Code 3548.1). There are no specific statutory guidelines for how the hearing is conducted; there is, however, a list of specific criteria that the panel must consider when making their findings (Government Code 3548.2).

Step 14: Often the parties become aware of the factfinding recommendations through their panel representatives prior to the issuance of the report and a settlement is reached. If factfinding results in agreement, the factfinding report is usually not issued and the process of accepting the contract takes place (steps 7 through 9). If no agreement is reached within 30 days after the factfinding hearing or longer if mutually agreed upon, the panel issues an advisory recommendation on the terms of the settlement.

Step 15: The factfinding recommendations are submitted privately in writing to the parties and must be made public by the employer within 10 days of receipt (Government Code 3548.3).

Step 16: Following completion of the impasse procedures, the next steps depend on the previous conduct of the parties and the strategy they each choose to pursue. The parties may continue negotiations. The mediator may continue mediation efforts (Government Code 3548.4). The employee organization may decide to go on strike. (PERB has the authority to determine the legality of a strike and whether or not to seek a court injunction against the strike. If the employee organization has participated in good faith in the bargaining process, PERB will most likely not attempt to stop a strike.)

Step 17: If agreement is reached, the parties conclude negotiations by accepting the agreement (steps 7 through 9). Absent any agreement and assuming the district participated in negotiations and impasse in good faith, the board may decide to adopt its last, best offer. Adopting a last offer, however, is a very complicated matter which should only be undertaken with advice of counsel.

Step 18: If the employee organization makes substantial changes in its position, the district has a continuing duty to bargain.

Step 19: Public disclosure of major contract provisions is required prior to entering into a written agreement (step 8) and should also take place prior to any unilateral action by the district to implement its last, best offer.

Step 20: If the district has gone through the bargaining process in good faith and the employee organization makes no substantive change in its proposals, the district may choose to implement its last, best offer or the district may choose to do nothing and to continue operating under the terms of the expired contract.

Appendix C. Strike Checklist

The following checklist summarizes the key actions that districts should take to avoid a strike, prepare for a strike, manage the district during a strike and rebuild after a strike. Further information is available in the preceding chapters of CSBA's "Before the Strike: Planning Ahead in Difficult Negotiations."

Avoiding a Strike

To minimize the possibility of a strike, the district should:

- assess the current state of relations between the board and employees, the board and employee representatives and the board and community;
- determine the level of parent and community involvement in the schools;
- ensure that the district has a plan in place for building parent, community and staff support on an ongoing basis;
- identify an appropriate negotiations process and revise as necessary;
- set clear parameters for the district's negotiator;
- participate in negotiations fairly and honestly;
- monitor the negotiations process to look for warning signs that an agreement cannot be reached;
- remain open to alternative positions as appropriate without giving in on positions that are essential to the district's fiscal health or educational program;
- seek a no-strike clause in collective bargaining agreements;
- review board policies, administrative regulations and collective bargaining agreements to ensure there are no loopholes related to sick leave, other paid leaves, benefits, working hours, work assignments and substitute personnel that would limit the district's ability to respond to a strike;
- in the case of an impasse, participate in good faith in mediation procedures;
- if mediation fails, participate in good faith in factfinding procedures;
- if the union substantially changes its position following factfinding procedures, fulfill the district's obligation to continue negotiations; and
- if the district is considering adopting its "last, best offer," consult legal counsel.

Preparing for a Strike

To be prepared well in advance of a strike, the district should:

- always consider the possibility of a strike even before negotiations begin;
- review past bargaining sessions, the number of grievances filed prior to negotiations, recent settlements by neighboring districts and information provided by administrative staff to find signs of potential trouble;

- during negotiations, look for polarization of positions, escalation of demands, lack of cohesiveness among the union's representatives, personal attacks on the board or negotiator, attempts to divide the district's team, an unwillingness to listen to facts provided by the district, escalation of media contact or other public pressure and allegations of bad faith bargaining;
- develop a written strike plan addressing a broad range of issues, including but not limited to:
  - —roles and responsibilities of the board and district staff;
  - —feasibility of keeping schools open during a strike;
  - —plans for hiring, paying and communicating with substitutes;
  - —continuation or termination of district-paid benefits;
  - —continuation of the educational program;
  - —status of extracurricular activities;
  - —measures to ensure the safety of students, substitutes and nonstriking staff;
  - —internal communications procedures;
  - —external communications with parents, the media and the community;
  - —provisions for safe, effective board meetings;
  - —legal strategies; and
  - —costs of implementing the strategies in the strike plan;
- adopt a board resolution to clarify actions that will be taken during a strike and to delegate appropriate authority to the superintendent.
- upon receiving notice that the union intends to strike, communicate with:
  - —Public Employment Relations Board;
  - —Employment Development Department;
  - —employees in the striking unit;
  - —employees in nonstriking units;
  - —parents;
  - —students;
  - —law enforcement;
  - —media; and
  - —California School Boards Association;
- collect lesson plans, grade books, keys, equipment and supplies from employees who will be on strike, and ensure that adequate supplies and instructional materials are on hand.

During a Strike

If a strike occurs, the district should:

- review the district's strike plan with the board and district staff;
- establish a coordinating team or strike committee to oversee implementation of the strike plan and serve as a focal point for internal and external communications;
- be familiar with and prepared for union pressure tactics;
- define roles and responsibilities of the coordinating team, board, superintendent, negotiator, communications coordinator and spokespersons, legal counsel, principals and other staff;
- present a united front;
- keep schools open if at all possible;
- determine the number of regular employees who will be available and the number of substitute employees needed;

- determine the rate of pay for substitutes during the strike;
- recruit knowledgeable and skilful substitutes who meet the qualifications stipulated in state law;
- provide an orientation session for substitutes to inform them of potential hazards during a strike, the safety measures that have been instituted and expectations for work performed by substitutes;
- distribute paychecks to striking employees only for any work they performed prior to the strike;
- consult legal counsel to determine whether district-paid benefits (e.g., health care benefits, life and disability insurance, vacation and sick leaves, and credit for service) should continue to be provided to striking employees;
- keep school schedules and class assignments as normal as possible;
- provide educational activities to keep students busy and on track with the district's curriculum and standards;
- determine whether or not to conduct extracurricular activities during a strike;
- revise transportation schedules and locations as necessary to ensure student safety;
- if bus drivers are on strike, continue to provide transportation for disabled students as required by law and consider alternatives for other students;
- if food service workers are on strike, consider alternative services but continue to provide free and reduced-price meals as required by law;
- consult the district's insurance carrier about potential liability in the event of property damage or injury during a strike;
- review district and school site safety plans, evacuation plans, board policies and administrative regulations on safety-related topics;
- develop additional safety measures as needed, such as:
  - —measures to prevent strikers from entering school buildings;
  - —communication and collaboration with law enforcement;
  - —use of additional security personnel;
  - —safeguarding of records and equipment;
  - —changes in school bus drop-off and pick-up locations;
  - —off-site parking for substitutes and nonstriking employees;
  - —documentation of picket line activity; and
  - —security at the homes or businesses of board members;
- review (or develop) a communications plan for the district which addresses the purpose, goals and objectives of the plan; target audiences; key messages; strategies tailored to each target audience; and spokesperson(s) and media contact;
- provide accurate information to the media and community which includes the potential impact of union positions on the district and students; avoid personal attacks;
- develop a plan for frequent and effective internal communications among the superintendent, board, negotiator, communications coordinator, legal counsel, principals and other staff;

- consider installing additional telephone lines, providing at least one unlisted telephone number and other strategies to communicate internally and with the public in case telephone lines are jammed;
- proceed with regularly scheduled board meetings but institute additional measures to ensure that meetings are safe and orderly, including but not limited to:
  - —avoiding strike-related items on the agenda as much as possible;
  - —setting time limits on public input;
  - —using a large meeting room with adequate seating; and
  - —using additional security staff;
- consult legal counsel to determine if the district should request that PERB seek an injunction to stop the strike or to limit the number or location of picketers;
- consult legal counsel to determine if the district should file "unfair practice" charges against the union;
- determine whether negotiations will continue during the strike; and
- ensure that the final contract meets the needs of the district and students and was not a quick-fix solution to escape the pressures of the strike.

Rebuilding After a Strike

To enable the district to get past the hurt feelings and the disruption of the strike as quickly as possible, the district should:

- develop a plan for rebuilding after a strike;
- if the strike was unlawful or strikers engaged in unlawful behavior during the strike, determine what discipline, if any, will be imposed. Consult with legal counsel to determine whether dismissal, suspension from employment, revocation or suspension of credentials, involuntary transfer or written warnings in personnel files are appropriate. Weigh the need to discipline employees against the potential harm to the district's efforts to rebuild relations;
- consult with legal counsel to determine whether to seek damages through PERB in order to reimburse costs of the strike;
- if the district's collective bargaining agreement contains a no-strike clause, determine whether to sue for breach of contract;
- devote time and resources to making a smooth transition back into normal district operations;
- resume any district operations, educational programs or extracurricular activities which were on hold during the strike;
- keep students, parents and the public informed about the resumption of school schedules, staffing and other district operations;
- provide assistance to students as needed to help them make up for any lost time or lost educational opportunities;
- inform employees, administrators and the public about the provisions of the new contract;

- ensure that school administrators are prepared to welcome back employees and respond to questions and concerns;
- develop methods to improve ongoing communications with employees;
- develop a program to increase communications with the community as well as community involvement in the schools;
- evaluate the strike experience, including but not limited to:
  - —the events and conditions that led to the strike;
  - —the district's readiness to respond to the strike;
  - —the effectiveness of the district's response;
  - —the impact of the strike on students, parents, employees, the board and the community;
  - —the board's teamwork and effectiveness;
  - —the district's plans to mitigate the impact of the strike;
  - —unresolved contract issues; and
  - —actions the district might take to prevent future strikes.

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